

## CHAPTER 80

### NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

#### Authority

N.J.S.A. 55:14K-5g.

#### Source and Effective Date

R.2000 d.132, effective February 28, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

#### Executive Order No. 66(1978) Expiration Date

Chapter 80, New Jersey Housing and Mortgage Finance Agency, expires on February 28, 2005.

#### Chapter Historical Note

Chapter 80, Housing Finance Agency, was adopted as R.1977 d.71, effective march 4, 1977. See: 9 N.J.R. 62(c), 9 N.J.R. 164(c).

Chapter 80, New Jersey Housing and Mortgage Finance Agency, was adopted as R.1985 d.241, effective May 20, 1985. See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.1990 d.248, effective April 20, 1990. See: 22 N.J.R. 277(b), 22 N.J.R. 1556(a).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.1995 d.247, effective April 17, 1995. See: 27 N.J.R. 265(a), 27 N.J.R. 1977(a).

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as R.1995 d.281, effective June 5, 1995. See: 27 N.J.R. 986(a), 27 N.J.R. 2190(a).

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was repealed and Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as new rules by R.1996 d.255, effective June 3, 1996. See: 28 N.J.R. 1443(b), 28 N.J.R. 2843(a).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.2000 d.132, effecting February 28, 2000. See: Source and Effective Date. See, also, section annotations.

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#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 5:80-1.1 Authority

These regulations are issued under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting Chapter 530 of the Laws of 1983, N.J.S.A. 55:14K-1 et seq.; specifically N.J.S.A. 55:14K-5(g).

**5:80-1.2 Purpose and objective**

(a) These regulations are established to effectuate and shall be applied to accomplish the general purposes of the New Jersey Housing and Mortgage Finance Agency including:

1. Assuring the availability of rental and owner occupied housing;
2. Stimulating the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of housing opportunities for New Jersey residents particularly those of low and moderate income;
3. Enhancing the production capacity of the private sector in meeting the housing needs of residents of New Jersey;
4. Assisting in the revitalization of the State's urban areas; and
5. Responding to changing housing demographic and economic circumstances for the development of innovative and flexible financing vehicles.

**5:80-1.3 General definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" shall mean the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.

"Assisted living" means a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need these services, including residents who require formal long-term care. Assisted living promotes resident self direction and participation in decisions that emphasize independence, individuality, privacy, dignity, and homelike surroundings.

"Assisted living residence" (ALR) means a housing project which is a facility licensed by the Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, for four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

"Collateral" shall mean with respect to any loan those securities, mortgages or other instruments defined as eligible pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such loan.

"Collateral requirement" shall mean, as of any date of calculation and with respect to any loan the amount at which collateral securing such loan is required to be maintained pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such loan.

"Home Improvement Loan Program Commitment" shall mean the aggregate unpaid principal amount of home improvement loans which a mortgage seller offers to deliver and sell to the Agency and the Agency agrees to purchase, such sale and purchase to be made under a Note Purchase Agreement.

"Housing project" or "project" shall mean any work or undertaking other than a continuing care retirement community, whether new construction, improvement, rehabilitation or acquisition of existing buildings or units, which is designed for the primary purpose of providing multi-family rental housing or acquisition of sites for future multi-family rental housing, including an assisted living residence.

"Housing sponsor" shall mean any person, partnership, corporation or association to which the Agency has made or proposes to make a loan, either directly or indirectly through an institutional lender, for a housing project.

"Mortgage Purchase Agreement" shall mean an agreement, entered into between a mortgage seller and the Agency, under which the mortgage seller agrees to deliver and sell to the Agency and the Agency agrees to purchase mortgage loans.

"Mortgage Servicing Agreement" shall mean an agreement entered into between a mortgage seller or other person acceptable to the Agency, under which the mortgage seller or other person agrees to service the mortgage loans purchased by the Agency from such mortgage seller under a Mortgage Purchase Agreement.

"Note Purchase Agreement" shall mean an agreement, entered into between a mortgage seller and the Agency, under which the mortgage seller agrees to deliver and sell to the Agency and the Agency agrees to purchase single family home improvement loans.

"Notice of Acceptance" shall mean the Notice of Acceptance by the Agency to the mortgage seller of an application.

"Primarily residential in character" as set forth in N.J.S.A. 55:14K-3(e) shall mean:

1. With regard to an individual unit, structure, or property, that at least 60 percent of the net sheltered area, not including areas for circulation, utilities and common space, is or will be upon completion of scheduled improvements used exclusively as a residence for one or more persons; or

2. With regard to a project or area, that at least 60 percent of the properties in the area or 60 percent of the floor area in the project, not including areas for circulation, utilities, and open space, consists of units, properties, or structures devoted primarily to residential use.

"Single family mortgage loan" shall mean any mortgage loan for a structure which contains no more than four dwelling units at least one of which is owner-occupied and may include an owner-occupied single dwelling unit within a condominium or cooperative apartment. Those areas which are non-residential in use shall not exceed those specified by the Federal Housing Administration Property Standards for one or two living units as in effect from time to time.

"Single family home improvement loan" shall mean an eligible loan for the rehabilitation or improvement of a unit or structure which contains no more than four dwelling units where at least 90 percent of said structure or single dwelling unit is devoted to residential use, and at least one such dwelling unit is owner-occupied.

"Special needs project" means a project serving special needs populations under the developmental disability housing programs, transitional housing revolving loan programs, shelter plus care programs, HIV/AIDS programs, and similar special needs housing programs, the primary purpose of which is to provide certain types of homes and/or community-based supportive services to individuals and families who are in need of such homes and/or services. Supportive services range across a wide continuum of care and will vary from person to person depending on their particular physical, psychosocial, and/or mental limitations, and may vary for one person over time. Examples of targeted populations that fall within a special needs project are:

1. Persons with AIDS/HIV-related illness;
2. Homeless;
3. Mentally ill;
4. Frail elderly;
5. Alcohol and/or substance abusers;
6. Persons with physical disabilities;
7. Mentally retarded/developmentally disabled;
8. Pregnant/parenting teens;
9. Victims of domestic violence; or

10. Orphans, children in foster care, and children who are wards of the Division of Youth and Family Services (DYFS).

"State" shall mean the State of New Jersey.

"Term sheet" shall mean the statement of terms, constituting part of the Notice of Acceptance of a commitment, governing the sale and purchase of mortgage loans pursuant to a commitment.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Inserted "Assisted living", and "Assisted living residence"; and rewrote "Housing Project" or "Project".

Amended by R.1999 d.329, effective October 4, 1999.

See: 30 N.J.R. 3355(a), 31 N.J.R. 2878(b).

Inserted definition of "Special needs project".

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Rewrote "Special needs project"; and inserted "State".

#### 5:80-1.4 Regulations regarding Housing Projects

(a) All Agency financing in connection with Housing Projects having more than 25 units, including eligible loans and loans to lenders made with regard to Housing Projects, shall be subject to N.J.A.C. 5:80-2 through 9, 17, 18, 20, and 29 through 32. Where appropriate, other regulations within this chapter are specifically made applicable to Housing Projects. N.J.A.C. 5:80-2 through 9, 17, 18, 20, and 29 through 32 shall not apply to:

1. The construction or rehabilitation of:
  - i. Continuing care retirement communities;
  - ii. Nonresidential facilities or structures (other than those permitted within a housing project);
  - iii. Boarding houses;
  - iv. Residential developments having 25 dwelling units or less; or
  - v. Special needs projects;

2. The improvement, acquisition, operation, maintenance or repair of Housing Projects or any other structure or improvement financed by the Agency (other than that determined by the Agency to constitute substantial rehabilitation). Notwithstanding the foregoing the Agency may require applicable provisions of N.J.A.C. 5:80-4 to apply to any such improvement, maintenance or repair, if it deems such application necessary; or

3. Any Housing Project for which construction or substantial rehabilitation commenced more than one year prior to the actual date of the Agency's having provided financing for the project.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

In (a), inserted "having more than 25 units," following "Projects", and inserted references to subchapters 20, 29 and 30 through 32.

Amended by R.1999 d.329, effective October 4, 1999.

See: 30 N.J.R. 3355(a), 31 N.J.R. 2878(b).

In (a), updated references, and added (a)iv.

## SUBCHAPTER 2. ACTIONS REGARDING HOUSING SPONSORS

### 5:80-2.1 Rights of housing sponsors

(a) Wherever possible, the Agency will permit, provide for and encourage the right of local housing sponsors to exercise their own initiative and competence in the administration of their assets and the conduct and operation of housing projects, and exercise their rights and responsibilities to the fullest extent permitted by law.

(b) The provisions of the Act pertaining to the regulation and assumption of powers and duties of housing sponsors shall be for the purposes of protecting the collateral for any loan or loans; implementing or enforcing any condition, requirement or criterion for loans or any agreement between the housing sponsor and the Agency; securing the rights and remedies of lenders and bondholders; and protecting the interests of tenants at the projects.

### 5:80-2.2 Consultation with housing sponsors

(a) Prior to the adoption, amendment, or repeal of any rule governing the operation of Agency-financed housing projects, the Agency shall:

1. Submit a proposed form of the rule to be adopted, amended or repealed to the Office of Administrative Law for publication in the New Jersey Register for a 30 day public comment period, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; and
2. Give housing sponsors or their agent(s) written notice of the proposed rule to be adopted, amended or repealed. The notice shall be given prior to or simultaneously with the date the proposed rule will be published in the New Jersey Register for public comment.

(b) The notice to housing sponsors shall consist of a copy of the proposed rule to be adopted, amended or repealed and shall indicate the date the 30-day public comment period expires, as published in the New Jersey Register.

(c) Any housing sponsor wishing to submit data, views, or arguments concerning the proposed rule may do so in writing prior to the expiration of the public comment period as established in the New Jersey Register.

(d) The Agency will consider all timely submitted data, views or arguments from housing sponsors before taking final action on the rule to be adopted, amended or repealed.

(e) The Agency shall respond in writing to each housing sponsor, submitting data, views, or arguments concerning the proposed rule.

(f) No rule governing the operation of a housing project shall be effective unless adopted in substantial compliance with N.J.A.C. 5:80-2.

(g) Upon substantial compliance with N.J.A.C. 5:80-2, the Agency may approve the proposed rule for final adoption. Once the Agency approves the final version of the rule, it will be submitted to the Office of Administrative Law for publication and adoption in the New Jersey Register.

(h) The Agency also shall give direct notice concerning the adoption, amendment or repeal of any rules to any interested party who annually files a request for such information with the Executive Director.

(i) Whenever feasible, the Agency will circulate to housing sponsors notices of proposed changes in Federal Regulations that would affect the operation of Agency financed housing projects on which the Agency intends to rely. The sponsor may submit comments or opinions on any proposed changes to the Executive Director of the Agency for possible inclusion in the Agency comments. All comments will be forwarded to the office or the individual that the Federal Government designates in the notice.

Amended by R.1991 d.408, effective August 5, 1991.

See: 22 N.J.R. 3669(b), 23 N.J.R. 2306(b).

Added new (a)1; clarified length of comment period and promulgation process throughout section.

### 5:80-2.3 Temporary appointment of Agency representative to perform functions on behalf of housing sponsors

(a) The Agency will exercise its remedies and powers under N.J.S.A. 55:14K-7b(6) only with regard to material violations and after reasonable notice and reasonable opportunity to correct the violation is provided to the housing sponsor in accordance with the procedures set forth below.

(b) General areas in which material violations could result in Agency action include:

1. A material violation by the housing sponsor of the terms of any mortgage, mortgage note or regulatory agreement between the Agency and the housing sponsor;
2. A material violation by the housing sponsor of an agreement with the municipality under which it has been granted tax exemption;
3. A material violation by the housing sponsor of the Act or any rules and regulations of the Agency;
4. A determination by the Agency that any loan or advance from the Housing Development Fund pursuant to N.J.S.A. 55:14K-30 is in jeopardy of not being repaid.

(c) Specific material violations of the Act shall include, but are not limited to the following events, which shall generally be sufficient to give rise to the exercise of remedies under N.J.S.A. 55:14K-7b(6) in accordance with the procedure noted in (e) below. The time periods specified here relate solely to initiating action under N.J.S.A. 55:14K-7b(6) and are in no way intended to waive or supersede any time period specified in any other contract, policy or procedure and all obligations of the housing sponsor and any rights and remedies of the Agency with regard thereto remain unchanged.

1. Violation of subsidy contract as declared by HUD which is not corrected to HUD's satisfaction within the time frame as established by HUD;
2. Failure to submit final cost certification within seven months of substantial completion of construction;
3. Failure to submit a rent determination and annual operating budget at least 30 days prior to the end of the fiscal year;
4. Failure to submit the proposed name of a qualified management firm at least 30 days prior to the end of an existing contract or 120 days prior to initial occupancy of the project;
5. Failure to submit an accountant engagement agreement at least 30 days prior to the end of the fiscal year and/or failure to submit the certified annual audit within five months after the close of the fiscal year;
6. Three months arrears of debt service;
7. Failure to maintain at required levels any reserve account required by the Agency in conjunction with the operation of the Project;
8. Failure to correct a physical condition which jeopardizes the safety of tenants or the public or the integrity of any primary building system;
9. Failure to pay any utility bill after a receipt of written notice indicating that service would be terminated;

10. Failure to pay any lien or judgement, including municipal liens, which could jeopardize the financial viability of the development.

(d) It is the obligation of the Agency to give written notice to a sponsor that a condition exists which is of sufficient gravity to warrant exercise of remedies, under N.J.S.A. 55:14K-7b(6). The Agency will provide written notice of the specific material violation(s) to the sponsor, and may suggest courses of action to correct the violation(s).

(e) The housing sponsor shall take the following corrective actions:

1. Within 15 days of the receipt of the notice described in (d) above, the sponsor shall submit a statement to the Director of Management of the Agency setting forth its proposal for curing the violations indicated and a definite time schedule for the corrective actions.
2. If the sponsor is unable to develop a statement within 15 days, it shall submit a written request for an extension of time to prepare the plan to the Director of Management within the 15 day period.
3. The Director of Management may grant extensions of time for up to an additional 30 days for submission of the statement outlining the actions that the sponsor intends to take.





4. During the time allowed for submission of the statement, the Agency staff shall be available to meet with the sponsor in order to assist him in the development of a program of corrective actions. If no proposal is submitted by the sponsor then the Director of Management shall propose a corrective plan to the sponsor.

5. Upon receipt of the proposal from the sponsor, the Director of Management may either accept the plan or suggest alternatives or modifications to the plan in writing to the sponsor.

6. If the sponsor is unwilling to accept the modifications or plan suggested by the Director of Management, then the sponsor may request in writing within 10 days that the matter be referred to the Executive Director of the Agency or his or her designee, for decision on the plan.

7. Once the commitments by the sponsor are accepted by the Agency, or an agreement is reached between the Agency and the sponsor, or a decision is made by the Executive Director, the sponsor shall immediately implement the corrective actions within the time period specified in the plan.

(f) Any violations of or failure to implement the corrective plan shall be subject to the following:

1. The Executive Director shall bring the matter of such failures and a recommendation of remedy to the Members of the Agency Board at the next public meeting scheduled to allow sufficient time for seven days written notice to the sponsor that the failure to implement or abide by the recommended corrective actions is being brought to the attention of the Members of the Agency Board and that suspension of the sponsor may be requested.

2. The Members shall hear the information provided by the Executive Director along with any information presented by the housing sponsor at a public meeting prior to taking any action pursuant to N.J.S.A. 55:14K-7b(6). The Members may, however, wish to discuss the matter among themselves at a session closed to the public if permitted by N.J.S.A. 10:4-1 et seq.

3. The decision by the Members of the Agency shall be final subject only to review by a court of competent jurisdiction.

(g) Pursuant to the Act, persons appointed to administer the affairs of the project after suspension of the housing sponsor shall only serve for a period co-existent with the duration of the original violation giving rise to the need for the corrections or until the Agency is assured in a satisfactory manner that the violation or violations of a similar nature will not recur. Upon correction of the violation in a reasonable and satisfactory manner, the housing sponsor may submit a request to the Agency for restoration of control back to sponsors. The Agency will respond to such

request within 30 days. During that period in which the Agency is considering the housing sponsor's request, the term of the persons appointed to administer the affairs of the project will continue.

(h) The regulations in this subchapter are intended to be in addition to other powers and remedies which the Agency may have at law or by agreement and shall not be deemed to abridge any other rights or remedies of the Agency or the sponsor.

(i) Upon a vote by the members of the Agency Board that there is an immediate need to take action and a finding that failure to take immediate action could jeopardize the health and safety of tenants at the housing project or cause substantial harm to the financial viability or physical structure of the project, the Agency may waive the regulations set forth above and immediately implement appropriate action.

### SUBCHAPTER 3. RETURN ON EQUITY

#### 5:80-3.1 Authority

This subchapter is promulgated pursuant to authority of N.J.S.A. 55:14K-5g and N.J.S.A. 55:14K-7a(6).

#### 5:80-3.2 Housing projects prior to January 17, 1984

(a) For all eligible loans for Housing Projects made by the Agency prior to January 17, 1984, the rate of return on its investment in the housing project, as determined by the Agency ("stated equity"), which can be paid or earned by the Housing Sponsor of the property and improvements or its principals or stockholders shall not exceed eight percent per year on a cumulative but not compounded basis. This restriction shall apply for the full term of the Agency's loan and shall apply to return on investment earned or received upon construction and rehabilitation of the housing or from the operations of the housing or upon the sale, assignment or lease of the housing subject only to the applicable provisions, if any, of the Agency's regulations concerning the sale of projects owned by nonprofit sponsors and transfer of ownership interests.

(b) Housing Sponsors who have agreed to an annual rate of return of less than eight percent may request an increase in the rate to a maximum of eight percent upon meeting the following criteria:

1. The housing project has funds, including Development Cost (DCE) or Community Development (CDE) Escrows operating, savings and investment accounts and all other funds, accounts and escrows of the project, of an amount equal to three months of operating expenses (for senior citizens projects) or six months of operating expenses (for family projects) which includes debt service

and reserve payments of the Agency-approved annual budget in effect at the time of the request and after deducting the following:

- i. Debt service arrearages;
  - ii. Current unpaid invoices;
  - iii. Fully-funded tax, insurance, reserve for repair and replacement and all other escrow accounts except the DCE and CDE;
  - iv. The amount of anticipated or proposed repairs or capital improvements; and
  - v. Any other current obligation of the project.
2. The housing project has been current in all escrow and debt service payments for the three fiscal years prior to the request.
3. The requirements at (b)1 and 2 above need only be met at the time the sponsor seeks approval of the increased rate of return. Once the sponsor qualifies and receives approval of the increased rate of return, future distributions of return on equity shall be governed by the rules at N.J.A.C. 5:80-3.4.

(c) Housing Sponsors who meet the criteria in (b) above, shall be granted an increase in the annual rate of return, up to eight percent, subject to the following conditions:

1. The increased rate of return shall be prospective only which includes the year in which the sponsor applies;
2. Payment of a \$3,500 processing fee;
3. Payments of the increased return on equity shall be subject to this subchapter; and
4. Amendments will be made to the appropriate mortgage documents to reflect the conditions in (c)1 and 3 above.

Amended by R.1994 d.398, effective August 1, 1994.  
See: 26 N.J.R. 1186(a), 26 N.J.R. 3163(b).

### 5:80-3.3 Housing projects on or after January 17, 1984

(a) For each eligible loan made by the Agency on or after January 17, 1984 for a Housing Project, the Agency shall determine, at the time of initial mortgage closing, the investment made by the Housing Sponsor.

1. Investment shall include:
  - i. Actual cash or cash equivalent as determined by the Agency;
  - ii. Professional fees pledged toward approved project cost;
  - iii. Any grants and/or loans procured by the Sponsor to the extent they are applied to Agency approved project costs and to the extent they are not repayable from project funds;

iv. Any additional cash contributions made by the Housing Sponsor subsequent to initial closing if such contributions were utilized for project costs approved by the Agency.

2. Increases in project value, as determined by an Agency approved appraisal, may also be recognized as part of this investment.

3. The Housing Sponsor shall be entitled to return on its investment except for funds procured through grants or loans at rates established in accordance with (b) or (c) below. It shall earn a return on any cash portion of its investment from the date it is actually contributed and on the non-cash portion of its investment from the date it is utilized towards approved project costs.

(b) For housing projects which receive a loan from the Agency under the New Jersey Urban Multi-family Production Program, the rate of return on investment may not exceed 12 percent.

(c) For Housing Projects which receive a loan from the Agency on or after January 17, 1984, the Agency shall fix, at the time of the making of the loan, the rate of return which may be earned or received by the Housing Sponsor on its investment on a cumulative but not compounded annual basis from the development, operation, sale, assignment or lease of the Housing Project according to the following schedule:

1. The Base Rate to be used in calculating the return on equity pursuant to 2 through 6 below, shall be equal to the rate being paid on 30-year treasury bonds at the time of the mortgage closing. This Base Rate will be determined by the Agency in its sole discretion using any reasonable source of information;

2. For units occupied by individuals or families who at the time of occupancy have a household income which is less than 50 percent of the median income for the area in which the project is located, the annual rate of return on investment may not exceed the then applicable base rate plus six percent;

3. For units occupied by families or individuals who at the time of occupancy had a total household income of less than 80 percent of the median income for the area, the annual rate of return on investment may not exceed the base rate plus four percent;

4. For all other units financed by the Agency, the annual rate of return on investment may not exceed the base rate plus two percent;

5. For developments which have a mix of units serving populations with an assortment of income ranges, the Agency shall determine the limit on the rate of return which may be earned by the Housing Sponsor by prorating the rate of return based upon the number of units devoted to the various income levels;

6. If the Agency determines that as a result of restrictions on development costs, rents or other factors, that the actual amount of return on equity which can be paid in any year will be significantly below that allowed by the Agency pursuant to 2 through 5 above, the Agency may set a return on equity limit which may be paid or earned on an annual, cumulative but not compounded basis, not to exceed the base rate plus 10 percent.

(d) For assisted living residences (ALRs) which receive a loan from the Agency, the housing sponsor may receive a return on investment annually as follows:

1. The first 20 percent annual return on investment;

2. When an ALR realizes a greater than 20 percent annual return on investment in any given year, a special service subsidy fund (Fund) shall be established and held by the Agency in which the next 10 percent or any part thereof above the first 20 percent return on investment shall be placed for the sole purpose of subsidizing rent and services to the low and/or moderate income residents of the ALR who may need assistance;

3. The housing sponsor may receive any and all annual return on investment which is greater than 30 percent for that calendar year in which it is earned.

Amended by R.1989 d.259, effective May 15, 1989.

See: 21 N.J.R. 94(a), 21 N.J.R. 1331(b).

Redesignated old (b) as (c) with no change in text and added new (b) regarding loans made under the New Jersey Urban Multi-Family Production Program.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (d).

#### Case Notes

Tax abatement did not violate constitutional profits and dividends limitation. *Township of North Bergen v. City of Jersey City*, 232 N.J.Super. 219, 556 A.2d 1255 (A.D.1989), certification denied 117 N.J. 632, 569 A.2d 1334.

#### 5:80-3.4 Conditions required for distribution—

(a) The following conditions must be met before a return on equity will be authorized by the Agency:

1. A final mortgage closing must be held, unless a waiver is granted in accordance with (b) below;

2. The project must be current in all financial obligations, including debt service, repair and replacement reserve and tax and insurance escrows. For purposes of this paragraph, project reserve accounts shall be considered current if they are funded to an acceptable level, as determined by the Agency, in accordance with the Agency's funding schedule;

3. Compliance with all repairs required by the Agency based upon the Agency's most recent physical inspection report;

4. All required reports and statements must be submitted by the housing sponsor;

5. Surplus cash must be available at the time of the request; and

6. The housing sponsor must utilize forms as required by the Agency when requesting a return on equity.

(b) The requirement of a final mortgage closing prior to receiving a return on equity may be waived by the Executive Director of the Agency if it is determined that the closing is being delayed due to circumstances beyond the control of the Housing Sponsor, (for example, construction litigation). In addition to the need for such a determination, in order to have such requirement waived, the Housing Sponsor must complete the following to the satisfaction of the Executive Director of the Agency.

1. Submission of Development Cost Certification.

2. Submission of Bank Statements on the Construction Loan Account.

3. Execution of a Memorandum of Understanding setting forth agreement as to the final mortgage amount including any funds necessary for final construction payment and any additional development costs which are approved by the Agency; and agreement, if applicable, regarding a reduction in the original mortgage loan amount.

(c) In addition to the conditions listed in (a) above, the following conditions shall be met by assisted living residences (ALRs) before return on investment shall be approved by the Agency and disbursed to the housing sponsor:

1. The ALR shall have a sustaining occupancy for two full consecutive years; and

2. The operating reserve fund established pursuant to N.J.A.C. 5:80-1.4(c)3 shall be fully funded with 75 days worth of operating expenses, including expenses of tenants' meals and basic services.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (c).

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

In (a), added the last sentence in 2, inserted a new 3, and recodified former 3 through 5 as 4 through 6.

#### 5:80-3.5 Waiver

If the Agency grants any waiver pursuant to N.J.A.C. 5:80-19 which by its nature affects a rate of return established by this subchapter, then the Agency in granting such waiver will establish a revised rate of return for any affected project.

## SUBCHAPTER 4. (RESERVED)

## SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS

**5:80-5.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Agency" is the New Jersey Housing and Mortgage Finance Agency.

"Cash proceeds" means that portion of the purchase price paid by the buyer to the seller in cash equivalent acceptable to the agency at closing or in successive years following the closing as determined by the agency.

"Closing" means the date on which title or other interest in the housing project is transferred from seller to buyer.

"Conversion" means transfers involving sale of the housing project owned by a nonprofit corporation to an ownership entity having profit motivated status such as a limited partnership.

"Portfolio Reserve Account" means that fund established pursuant to N.J.A.C. 5:80-5.9(b) intended primarily for financial support for any housing project financed by the agency.

"Purchase price" includes the cash proceeds plus secondary financing, if any, plus existing mortgage(s) assumed by the buyer.

"Secondary financing", both secured and unsecured, as any portion of the purchase price which is not paid in cash proceeds or by assuming an existing indebtedness. Secondary financing will be permitted as set forth in N.J.A.C. 5:80-5.7.

"Seller" is the existing mortgagor and owner of the housing project having a loan from the New Jersey Housing and Mortgage Finance Agency.

Amended by R.1990 d.504, effective October 15, 1990.

See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Definition for conversion amended; definitions for development costs, housing project, limited dividend corporation, net proceeds, resyndication and transaction cost deleted.

**5:80-5.2 General policy**

(a) To be effective, all proposed changes in ownership interests of an agency financed housing project must receive the prior review and written approval of the Agency's executive director.

(b) The prior specific review and approval of the Agency members is required if a proposed change involves a general partner, or shareholder with more than a 10 percent interest, or where the change involves a transfer of control of the housing sponsor.

(c) Changes in ownership processed under these rules shall not result in a modification of the statutory, regulatory or contractual requirements governing the housing sponsor and housing project except as may be provided in cases of prepayment pursuant to N.J.A.C. 5:80-5.10.

(d) The Agency is under no obligation to approve the transfer or resale, unless the proposed buyer has the financial sufficiency, organizational capabilities, background and previous housing experience which will help ensure that the buyer will be capable of operating the project.

(e) The approval of the Public Housing and Development Authority must be obtained where necessary pursuant to N.J.S.A. 55:16-1 et seq.

Amended by R.1990 d.504, effective October 15, 1990.

See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Text at (b) amended to include shareholder and transfer of control exception added to (d); provision on general partner's withdrawal Federal subsidy contract deleted at (e) and (g).

Amended by R.1995 d.247, effective May 15, 1995.

See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

**5:80-5.3 Applicability**

(a) The regulations in this subchapter are applicable in their entirety to all proposed changes or transfers of ownership interests except the following:

1. Changes or transfers which are fully encompassed by the separate regulations involving nonprofit conversions (N.J.A.C. 5:80-6). The conversion regulation shall be applicable to transfers involving conversions unless the Agency determines that such treatment would jeopardize the viability of the housing project, in which case the Agency, in its discretion, may apply these regulations to such conversion. In the event, however, of any conflict or inconsistency between the provisions of these regulations and N.J.A.C. 5:80-6 as it applies to such conversion, the provisions N.J.A.C. 5:80-6 shall control;

2. Changes or transfers which represent the first sale of partnership or shareholder interests in order to provide syndication proceeds on nonprofit conversions provided such sale occurs within nine months of the conversion closing;

3. Changes or transfers for projects which had profit motivated ownership status at initial mortgage closing and where such changes or transfers occur within three months of the Agency's recognition of completion of construction or rehabilitation of the project, for projects receiving both construction and permanent financing or within three months following the mortgage closing for projects receiving permanent financing only;

4. In the case of proposed changes or transfers of ownership of assisted living residences (ALRs), if any provision(s) of this chapter are in conflict with any provision(s) of N.J.A.C. 8:36 the provision(s) of N.J.A.C. 8:36 shall govern.

(b) Changes or transfers which fall within (a)2 and 3 above shall be governed by the general policy as set forth in N.J.A.C. 5:80-5.2 as well as the required documents submission set forth in N.J.A.C. 5:80-5.6(a) for a modified review. In addition, the fee set forth at N.J.A.C. 5:80-5.9(a)3 shall apply except that in no event shall the fee be less than \$1,000.

(c) The rules within this subchapter shall also be applicable to changes or transfers in ownership in cooperative or condominium projects financed by the Agency.

Amended by R.1985 d.241, effective May 20, 1985.  
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Old text deleted and new text substituted.

Amended by R.1990 d.504, effective October 15, 1990.  
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Examples deleted from (a); exception at (a)3 clarified; lower limit of fee in (b) set at \$1,000; (c) added.

Amended by R.1998 d.80, effective February 2, 1998.  
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

In (a), added 4.

#### 5:80-5.4 Procedure

(a) The seller must initially submit to the executive director of the Agency a written request for approval of any proposed change in ownership. The request must contain a detailed description of the terms of sale or other ownership changes and a statement of the reasons for the proposed sale. The seller must also identify in detail and in a written report, the present physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information or revisions to the report and may conduct its own review of the housing project's condition and operation.

(b) All essential parties within the seller's organization documents must approve the transfer or sale. An affidavit and opinion of the seller's legal counsel must be submitted to the Agency as proof of the legality of the transfer pursuant to the seller's Partnership Agreement or any other document and all applicable laws and regulations. An opinion of the buyer's legal counsel may also be requested by the Agency.

(c) In selecting the prospective buyer, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best financial package/offer. Full and complete disclosure as to the nature and amount of the transaction must be made in writing to the Agency.

(d) As a condition of approving the transfer, the Agency will require that the housing project be restored to sound

physical condition in accordance with the report submitted by the seller and the independent review by the Agency. Deferred maintenance must be corrected at the time of transfer unless otherwise approved by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency. A schedule for performing the work and a letter of credit or bond in the amount needed to complete the work must be provided to the Agency at closing.

(e) Cash contributions must be sufficient to fund both immediate and anticipated reserve needs. The mortgage and all fees and charges due the Agency must be current at the time of closing. All housing project reserve accounts must be funded to an acceptable level, as determined by the Agency, within 12 months from the date of transfer in accordance with the Agency's repair and replacement funding schedule.

(f) Contributions toward the purchase price from any sources other than cash proceeds, must be identified.

(g) Upon assignment and assumption of the Agency's mortgage, modifications shall be made to the mortgage clearly specifying the Agency's right to enforce these regulations.

#### 5:80-5.5 Scope of review

(a) The scope of the Agency's review of transfer depends on the nature of the interest to be transferred. A transfer of 90 percent or more of the ownership interest requires full review. Full review is also required in the following instances.

1. Transfer of title from the seller to any other party;
2. Any conveyance or attempted conveyance by land contract;
3. Transfer of 90 percent or more of the interest in the partnership/owner within a five year period;
4. A change in general partners or management control of the owner.

(b) In other cases, the Agency in its discretion may conduct a modified review.

#### 5:80-5.6 Required documents

(a) Required documents for a modified review must be satisfactory to the Agency and include at least the following:

1. Administrative questionnaires for buyer;
2. Complete description as to the nature of the transition;
3. Copy of Partnership Certificate with proposed revisions;
4. Any other documents determined by the Agency to be necessary.

(b) The following additional documents may be required for full review.

1. Previous Participation Certificates (form 2530) for buyer;
2. Experience questionnaire for buyer;
3. Buyer's certified financial statements;
4. Legal opinion from seller's attorney and, if requested by the Agency, for buyer's attorney;
5. Appraisal of property;
6. Physical inspection report approved by the Agency;
7. Financial report on project operations approved by the Agency.

Amended by R.1985 d.241, effective May 20, 1985.  
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).  
Section substantially amended.

#### 5:80-5.7 Secondary financing

(a) Secondary financing, representing a portion of the purchase price may be permitted by the Agency. However, the following limitations exist where secondary financing is an element of the transaction:

1. The Agency will review and may restrict all secondary financing particularly where the secondary financing is secured by a lien on the project;
2. Repayment of secondary financing cannot be taken into consideration in determining the rents to be charged tenants;
3. The second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the agency;
4. In the event of a declaration of default on any existing mortgage held by the Agency, the secondary financing debt and all rights thereunder to rent or any other project income or assets shall be assigned to the Agency.

#### 5:80-5.8 Return on equity

(a) The buyer shall assume the same rate of return on equity that the seller had. The buyer's equity in the housing project shall be determined in accordance with N.J.A.C. 5:80-3.3(a).

(b) The seller shall be limited to a cumulative, but not compounded, return on its equity, from project operations or sale, at the rate of return as determined by N.J.A.C. 5:80-3 and set forth in the mortgage and other contractual documents between the seller and agency.

1. Upon sale or other disposition of the project or any interest therein, the seller shall be entitled to a return of its equity in the project and any accrued but undistributed return on its equity. Such return shall be conditioned upon the Agency's mortgage and any other supplemental project financing from the Agency or other governmental agency or department being assumed by the buyer, and further conditioned upon the making of any required project repairs or improvements, pursuant to N.J.A.C. 5:80-5.4(d), and the payment of all amounts due the Agency and the funding of reserves pursuant to N.J.A.C. 5:80-5.4(e). The seller shall not be entitled to or paid any return until such conditions have been met. The seller's equity in the project shall be determined in accordance with N.J.A.C. 5:80-3.3(a).

2. Upon sale or other disposition of the project or any interest therein, the seller is not entitled to and may not retain or be paid any more than its equity in the project plus any accrued but undistributed return on its equity. Any amounts realized in excess of the aforementioned amounts less the total of the amounts listed below shall be paid into the Multi-family Rental Investment Program:

- i. Any amount of the purchase price which is paid or escrowed in an Agency controlled account for repairs or improvements pursuant to N.J.A.C. 5:80-5.4(d);
- ii. Any amounts paid to fund reserves pursuant to N.J.A.C. 5:80-5.4(e); and
- iii. Any mortgages or other supplemental financing from the Agency or other governmental agency or department which are paid or assumed upon transfer.

3. Funds paid into the Multi-family Rental Investment Program shall be used as provided therein or in the case of a housing sponsor organized under N.J.S.A. 55:16-1 et seq., such excess shall be distributed pursuant to said Act. The funds deposited into this program shall be used for the purpose of providing loans to rental projects meeting low and moderate income needs.

4. In cases where the sale or other disposition of the project includes a permitted prepayment of the Agency mortgage, return on equity shall be governed by the provisions of N.J.A.C. 5:80-5.10(b).

Amended by R.1990 d.504, effective October 15, 1990.  
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

References to rate of return on equity amended to conform to applicable statutes, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Financing Agency*, 114 N.J. 226 (1989).  
Amended by R.1995 d.247, effective May 15, 1995.  
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

#### 5:80-5.9 Required payment and repayments

(a) At closing, the following payments and repayments are required:

1. The buyer shall pay to the Portfolio Reserve Account a sum amounting to 3.25 percent of the purchase price.

2. The buyer shall submit with its request for review, a non-refundable fee of \$5,000 which will be applied at closing toward any payment or repayments due.

3. The seller shall pay to the Agency, as a processing fee, an amount as determined by the Agency, to reimburse the Agency for its administrative cost in processing the seller's request to transfer ownership of the project or any interest therein.

4. Any outstanding supplemental financing must be paid at closing, unless the Agency determines the financial viability of the project is not jeopardized by the continuation of such supplemental financing and the buyer assumes all supplemental financing.

(b) The Portfolio Reserve Account is a fund established by the Agency to provide support for any project financed by the Agency which is in need of financial assistance. The Portfolio Reserve Account, and any interest or investment income earned thereon, may be used, at the Agency's discretion, to fund debt service arrears and other operating deficits, capital improvements, and repairs of any project which cannot fund these items from normal project income. The Portfolio Reserve Account will enable the Agency to assist projects in maintaining physical and fiscal viability so as to preserve the housing units at rents which are affordable to low- and moderate-income families. Eligibility for assistance from the Portfolio Reserve Account shall be subject to the terms and conditions as determined by the Agency.

Amended by R.1990 d.504, effective October 15, 1990.

See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

References to fees amended to conform to applicable statutes, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Financing Agency*, 114 N.J. 226 (1989); contribution to Portfolio Reserve Account required in (b).

#### Case Notes

Regulation limiting profits on project financed by state Housing and Mortgage Finance Agency was invalid. *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226, 553 A.2d 798 (1989).

Regulation imposing fees on sellers was invalid. *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226, 553 A.2d 798 (1989).

Prepayment regulations do not violate the terms of the N.J. Housing and Mortgage Finance Agency, are statutorily authorized, and do not violate plaintiff's constitutional rights; regulation imposing closing fees is unreasonable and thus invalid. *Lower Main Street Assoc. v. N.J. Housing and Mortgage Finance Agency*, 219 N.J.Super. 263, 530 A.2d 324 (App.Div.1987) affirmed in part, reversed in part 114 N.J. 226, 553 A.2d 798.

#### 5:80-5.10 Prepayment

(a) Prepayment of the mortgage loan made by the Agency is prohibited, except as permitted in (b) below.

(b) Prepayment of the Agency mortgage loan will be permitted, with the prior written approval of the Agency, provided all of the following conditions are met:

1. Sponsors of projects may prepay the mortgage at any time following the 20-year period following the date of the mortgage closing. However, any such prepayment shall be conditioned upon the Housing Sponsor's agreement that: The Agency policies on tax, insurance and repair and replacement reserves; The provisions of N.J.S.A. 55:14K-7b; and The statutory provisions at N.J.S.A. 55:14K-1 et seq. and the corresponding rules under this chapter regarding tenant income eligibility, tenant selection, rent increases, certification/recertification of income, affirmative fair housing marketing, and transfer of ownership interests shall continue to be applicable in their entirety to the sponsor, project and tenants residing therein until the original expiration date of the original mortgage loan. Such prepayment shall also be conditioned upon the agreement of the Sponsor to pay the servicing fees and charges currently being paid by the Sponsor under the mortgage documents, through the remainder of the original mortgage term, in order to cover the administrative costs of the Agency in monitoring the statutory and regulatory controls that will continue to apply to the project. The Agency may require Housing Sponsors to execute a deed restriction or other appropriate agreement upon prepayment whereby the Sponsor acknowledges the continuing statutory and regulatory control of the Agency and its obligation to pay fees and charges determined by the Agency.

2. Any repairs or improvements pursuant to N.J.A.C. 5:80-5.4(d) must be made prior to prepayment or an amount sufficient to fund such repairs or improvements must be paid into an Agency controlled escrow account upon prepayment.

3. All fees and charges due the Agency must be paid prior to prepayment.

4. All supplemental financing on the project by the Agency or other State agency must be prepaid.

5. After prepayment, in implementing the provisions of N.J.S.A. 55:14K-7b, the Agency will initially require the following:

- i. Submission of an annual budget;
- ii. Submission of annual audited financial statements;
- iii. Annual physical inspections conducted by the Agency.

6. The Agency reserves the right to implement any of the additional provisions of N.J.S.A. 55:14K-7b, if determined by the Agency to be needed to preserve the financial viability of the project or its status as a low and moderate-income project, to maintain the physical condition of the project or to help ensure the safety and well-being of the tenants residing at the project.



7. After prepayment, return on equity rules at N.J.A.C. 5:80-3 shall continue until the expiration of the original mortgage term or until the owner funds an operating reserve account, whichever is sooner. Upon funding of an operating reserve account, return on equity rules shall terminate. The operating reserve shall be equal to three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments. The three/six months of operating expenses shall be calculated based on the Agency-approved annual budget. Once established, interest earned on a fully-funded operating reserve account may be withdrawn by the owner upon written request to and verification by the Agency that the account is fully-funded. If the operating reserve is thereafter used, return on equity rules shall be reinstituted until the operating reserve is again fully-funded. The determination of a fully-funded operating account after its initial establishment shall be based on the Agency-approved budget in effect at the time the project first established the operating reserve account.

(c) Notwithstanding (b) above, prepayment shall not be approved or permitted in cases which would:

1. Cause the Agency to be in default under its obligations to the bondholders of the bonds issued to finance the project;
2. Jeopardize the continuing tax exempt status of the bonds; or
3. Reduce or terminate subsidies to the project such as the United States Department of Housing and Urban Development Section 8 or Section 236, unless a reduction or termination is imposed by the United States Department of Housing and Urban Development or other issuing authority and results in a renewal of the subsidy to the project that will be sufficient to maintain the financial viability of the project through the end of the original mortgage term.

(d) Upon prepayment of the Agency mortgage as provided in (b) above, the Agency will endorse the mortgage for cancellation so the Sponsor may cancel it of record. In addition, upon prepayment, the statutory and regulatory controls of the Agency at N.J.S.A. 55:14K-1 et seq. and this chapter shall terminate for the Housing Sponsor and project, except for those preserved by (b)1 above. The termination of the Agency's statutory and regulatory controls shall not affect the requirements, restrictions and obligations of Housing Sponsors as mandated by N.J.S.A. 55:16-1 et seq. or any other applicable statute under which the corporate entity of the Housing Sponsor was created.

(e) The provisions of this section regarding prepayment shall not apply to projects financed under the Agency's New Jersey Urban Multi-Family Production Program (JUMPP).

(f) The provisions of this section which impose conditions on prepayment regarding Agency policies on the insurance and repair and replacement reserves, the provisions of N.J.S.A. 55:14K-7b, and the regulations on transfer of ownership interests and return on equity shall not be applicable to projects financed between October 15, 1990 and January 17, 1995.

Amended by R.1990 d.504, effective October 15, 1990.

See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Exceptions to prepayment prohibition added, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226 (1989). Amended by R.1995 d.20, effective January 17, 1995.

See: 26 N.J.R. 1187(a), 27 N.J.R. 321(b).

Amended by R.1995 d.247, effective May 15, 1995.

See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

Amended by R.2003 d.88, effective March 3, 2003.

See: 34 N.J.R. 3415(a), 35 N.J.R. 1267(b).

In (c), rewrote 3.

#### Case Notes

Regulation preventing prepayment of mortgage loans without agency approval was invalid. *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226, 553 A.2d 798 (1989).

Prepayment regulations do not violate the terms of the N.J. Housing and Mortgage Finance Agency, are statutorily authorized, and do not violate plaintiff's constitutional rights; regulation imposing closing fees is unreasonable and thus invalid. *Lower Main Street Assoc. v. N.J. Housing and Mortgage Finance Agency*, 219 N.J. Super. 263 (App.Div. 1987), affirmed in part, reversed in part 114 N.J. 226, 553 A.2d 798.

#### 5:80-5.11 Approval and disclosure requirements

(a) The Agency specifically reserves the right to investigate and disapprove any prospective buyer or any other party involved in the transaction including without limitation all limited and general partners, attorneys, syndicators, brokers or consultants, as well as any partners or shareholders thereof. Prior to its approval, the Agency may require any party to disclose such information as may be reasonably related to the transaction and may require any party to sign such waivers, releases or affidavits as may be necessary to authenticate or investigate the information requested.

(b) All reviews, inspections, reports and other determinations received pursuant to these regulations shall be subject to final review, approval and determination by the Agency.

### SUBCHAPTER 6. SALE OF PROJECTS OWNED BY NONPROFIT CORPORATIONS TO LIMITED PARTNERSHIPS

#### 5:80-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.



"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Cash proceeds" means that portion of the purchase price paid by the partnership to the nonprofit in cash at closing or in successive years following the close.

"Closing" means the date on which title to the development or project is transferred from the nonprofit to the partnership.

"Commitment Letter" means the initial proposal or letter of intention submitted by the prospective purchaser which outlines the parameters of the transaction and the offer.

"Community Development Escrow" (CDE) means that fund established pursuant to N.J.A.C. 5:80-6.5(a)2 or 5:80-6.6(b)4 primarily for use in assisting community improvements or services related to the development.

"Conversion" means the overall transaction in which ownership is transferred from the nonprofit to a partnership.

"Development Cost Escrow" (DCE) means that fund established pursuant to N.J.A.C. 5:80-6.5(a)1 intended primarily for use in improving or supporting the project itself.

"Gross syndication proceeds" means the sum of all capital contributions.

"Multi-Family Rental Investment Program" means the program funded through the use of Agency administrative funds and through payments as provided by N.J.A.C. 5:80-6.4 for the purpose of providing loans to rental projects meeting low and moderate income housing needs.

"Net proceeds" means the gross proceeds of the syndication, which are received from investor limited partners, less the costs of the syndication. The net proceeds include all payments made to or on behalf of the nonprofit and may include interest due on deferred payments. The net proceeds may not be used for any purpose other than to pay transaction costs or to fund the DCE or CDE unless otherwise expressly authorized by the Agency. Net proceeds does not include secondary financing granted on the sale from the nonprofit to the partnership.

"Nonprofit" means the nonprofit owner of the project that is conveying its interest in the profit and assigning its Agency mortgage on the premises to the partnership.

"Operating deficits" means all obligations, to the extent such obligations have not or will not be paid in full out of operating income, arising out of the management and operation of the project including without limitation:

1. Reserves, escrows or fees required by the Agency or by law;
2. Taxes or payments in lieu of taxes;
3. Utility bills;
4. Legal, accounting and other professional fees incurred by the partnership which have received prior approval by the Agency;
5. Insurance premiums; and
6. Judgments or settlements approved by the Agency.

"Original Mortgage Amount" means the amount of the loan which was made to the nonprofit or its predecessors by the Agency for development costs and was financed by bonds issued by the Agency.

"Partnership" means the limited partnership, which qualifies as a limited dividend housing association pursuant to N.J.S.A. 55:16-1 et seq., which takes title to the project from the nonprofit.

"Portfolio Reserve Account" (PRA) means that fund established by the Agency for the primary purpose of funding debt service arrearages, and other operating deficits or capital improvements of any project financed by the Agency that cannot fund these items from normal project income. Funds deposited in the PRA and the investment income earned thereon will be available for use by the Agency for the aforesaid purposes.

"Project Subsidy Reserve Fund" (PSR) means that fund established pursuant to N.J.A.C. 5:806.6(b) intended primarily for maintaining the operative viability of the Section 236 developments.

"Purchase price" means the total amount of capital pledged to the nonprofit sponsor including cash proceeds and secondary financing.

"Stated equity" means an amount equal to 10 percent of the revised total development cost determined by the Agency pursuant to N.J.A.C. 5:80-6.3.

"Surplus cash" means funds, including funds in the DCE and CDE accounts, available after payment of equity distributions, project expenses, operating deficits, including the full funding of all required reserve accounts and proposed capital improvements plus:

1. Two to six months of the annual budgeted project expense for senior citizen projects; or
2. Four to 12 months of the annual budgeted project expense for family projects.



"Syndication" means the admission of limited partners to the Partnership through the sale of partnership interests.

"Transaction cost" means those costs related directly to the sale of the project which are paid by or on behalf of the nonprofit. All transaction costs must be approved by the Agency and include with limitation required fees and payments specified in N.J.A.C. 5:80-6.4 as well as professional fees of the nonprofit and title insurance.

Amended by R.1985 d.241, effective May 20, 1985.

See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Added definition "Commitment Letter".

Amended by R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

Added new definitions: "Multi-Family Rental Investment Program" and "Surplus cash."

Revised "Portfolio Reserve Account" definition by specifying the purpose of PRA fund. Added new language: "for the primary ... aforesaid purposes."

### 5:80-6.2 Procedures

(a) The sale of a nonprofit sponsored development to a limited partnership is a complex transaction and involves substantial sums of money. Accordingly, the procedures in this section governing the transaction are intended to insure the integrity of the process and the protection of the nonprofit.

(b) The nonprofit may obtain such legal, financial and other professional services as are necessary to investigate, process and complete the transaction. The scope of all services and compensation for same must be approved by the Agency in advance. The amounts which can be paid for all such professional services may not exceed limits and hourly rates established from time to time by the Agency. If for any reason the conversion is not completed and approved services have been provided to the nonprofit, then the Agency may, if requested by the nonprofit, approve payment for professional services out of other assets of the nonprofit including operating income.

(c) No member of the nonprofit, its employees or professional advisors shall receive any fees in conjunction with the transaction other than those disclosed to and approved by the Agency. The president of the nonprofit, its attorney, the purchaser and the purchaser's attorney shall all provide affidavits at closing stating that to the best of their knowledge, no fees or payments have been made nor will be made to any member of the nonprofit corporation, employees or professional advisors other than those approved by the Agency.

(d) Since the nonprofit may become a partner with the purchaser of the development, the selection of same will be primarily in the hands of the nonprofit. However, the following procedures must be incorporated into the selection process:

1. While public bidding procedures are not required, equal information and opportunity must be provided to all potential purchasers.

2. Initial proposals must be solicited from as many interested parties as possible including all those on a list of interested parties maintained by the Agency.

3. All responses to proposals must be made in writing and should be submitted in a sealed envelope directly to a specific designee of the nonprofit on or prior to a certain date. No proposals shall be opened prior to the specified time and after the time set for submission of proposals, no new proposals should be accepted.

4. Upon opening the proposals, the nonprofit's designee shall immediately forward copies of all proposals to the Agency.

5. The nonprofit shall evaluate the proposals taking into account the initial purchase price offered, the amount of secondary financing involved in the transaction; the residual value to be returned to the nonprofit, if any; management support and control; and a variety of other business considerations. In evaluating all financial considerations, present value calculations should be included.

6. Upon the determination by the nonprofit as to choice of purchaser, it should submit a recommendation to the Agency along with a full report on the reasons behind the decision and an affidavit as to compliance with the procedures described in this section. As mortgagee, final approval of the transaction shall rest with the Agency.

(e) Within 21 days of the Agency's approval of the proposed sale of the project, the prospective purchaser shall deliver to the Agency security, in the form of cash, bond or letter of credit, in an amount equal to five percent of the cash proceeds. This security will be held by the Agency until the purchaser has fulfilled its obligations under the Commitment Letter, subject to terms and conditions approved by the Agency. If the purchaser does not fulfill its obligations in accordance with the Commitment Letter as approved by the Agency within six months of the approval, then the security funds shall be deposited by the Agency into a Project Subsidy Reserve or Development Cost Escrow established in the name of the nonprofit. If the proposed purchaser demonstrates its willingness and ability to perform its obligations in accordance with the Commitment Letter, and the transaction is not completed within six months of the Agency's approval, the security shall be returned to the proposed purchaser except for an amount not to exceed \$15,000 to reimburse the nonprofit for its actual costs incurred in the attempted conversion.

(f) At closing, the purchaser must provide cash or letter of credit in an amount equal to 30 percent of the cash proceeds. The difference between the amount provided at

closing and the stated equity amount must be funded at closing with cash or equivalents acceptable to the Agency.

(g) At closing, the purchaser shall deposit with the Agency a deed transferring title in the property back to the nonprofit. This deed will be held in escrow by the Agency subject to an agreement which authorizes the Agency to record the deed if the purchaser fails to pay any installment of the cash proceeds within 120 days of the date due.

Amended by R.1985 d.241, effective May 20, 1985.

See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Deleted "purchase agreement" and substituted "Commitment Letter".

### 5:80-6.3 Determination of total development cost

Prior to granting its approval of the sale of the project, the Agency will make a determination as to the total development cost of the project. The total development cost shall include the original mortgage loan amount and may include any supplemental financing provided by the Agency or the State of New Jersey and any additional funds to be paid out of the net proceeds which the Agency has determined to be reasonable and necessary for the development or financial viability of the housing project.

### 5:80-6.4 Required fees and repayments

(a) The following fees and repayments shall generally apply to all sales. However, where the nonprofit can demonstrate that the payment of such fees would be detrimental to the viability of the project these provisions may be waived, adjusted or deferred.

1. At closing, the nonprofit shall pay to the Agency a processing fee of one-half of one percent of the cash proceeds including cash, existing indebtedness assumed and secondary financing.

2. At closing, the nonprofit will pay to the Agency for return to the Revolving Housing Demonstration Fund interest on any seed money originally loaned to the nonprofit. Such interest shall be calculated at a rate of one percent above the prime interest rate as reasonably determined by the Agency for each given year on the amount of outstanding principal from the date on which any disbursement is made until the time of repayment.

3. At closing, for projects subsidized under Section 236 the nonprofit shall pay 10 percent of the cash proceeds received and for projects subsidized under Section 8 the nonprofit shall pay 15 percent of the cash proceeds received into the Portfolio Reserve Account established by the Agency. Funds deposited in the Portfolio Reserve Account and the investment income earned on those funds will be used by the Agency to fund debt service arrearages, operating deficits or essential capital improvements of any project financed by the Agency that cannot fund these items from normal project income.

4. Any supplemental mortgages or advances made by the Agency to the nonprofit shall be repaid at closing.

5. There shall be paid from the interest income on the escrow accounts a yearly Agency administrative fee of \$3,500 per project which shall be assessed proportionately against the respective accounts for the project to the extent available.

6. In determining whether required fees and payments pursuant to this section are to be waived, adjusted or deferred or in determining the amount of funds which may be allocated to a CDE on Section 236 projects, the Agency will consider the factors set forth in (a)6i-iv below. Accordingly, the nonprofit shall submit detailed information on the following matters:

- i. Operating revenue and expense projections for five years.
- ii. The rents expected to be charged at the development assuming reasonable annual increases for five years.
- iii. The rents charged and expected to be charged at comparable developments.
- iv. The effect on the requested action on (a)6i and ii above.

### 5:80-6.5 Use of funds with regard to projects subsidized under Section 8

(a) While the primary reason for permitting the sale and syndication of Section 8 projects is to insure financial viability of the project, a large portion of the proceeds will be available to the nonprofit to finance community activities. Accordingly, after payment of the amounts required under N.J.A.C. 5:80-6.4, the proceeds of the transaction shall be disbursed in the following manner:

1. There shall be deposited into a Development Cost Escrow (DCE) for the project those funds remaining after transaction costs are deducted from 60 percent of the cash proceeds or the stated equity amount, whichever is greater. With the approval of the Agency, the DCE shall be used to fund debt service arrearages and other operating deficits at the project including appropriate funding of required reserve accounts, as determined by the Agency, and for such other purposes as may be approved by the Agency as will improve the financial viability or physical structure of the project, or increase tenant safety and comfort.

2. The balance of the cash proceeds shall be deposited into a Community Development Escrow (CDE) in the name of the nonprofit. With the approval of the Agency these funds may be utilized by the nonprofit for any use permitted under (a)1 above or to increase amenities of the project; reduce maintenance and replacement costs of the project; provide or assist desirable social services benefiting the residents of the project or the community in which it is located; and finance various community development activities.

Amended by R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

Changed text to "project" from "development" throughout.

In (a)1: added "including . . . determined by the Agency."

#### **5:80-6.6 Use of funds with regard to projects subsidized under Section 236 Interest Reduction Program**

(a) These regulations recognize the essential difference between the Section 236 and Section 8 Program. In projects subsidized through interest reductions, tenants must bear the full responsibility for all other operating costs. Accordingly after payments required by N.J.A.C. 5:80-6.4, all proceeds of the sale of the project will be primarily pledged to easing the burden on the tenants by subsidizing repair and maintenance or operating costs. If, however, the nonprofit can demonstrate that the project is in sound physical and financial condition and will likely remain so for the foreseeable future, a portion of the proceeds or investment income on the proceeds may be deposited into a CDE.

(b) All cash proceeds received on the sale of a development subsidized under Section 236 shall, after payment required under N.J.A.C. 5:80-6.4 be deposited into a Project Subsidy Reserve (PSR). The income and principal on the PSR may be utilized in the following manner:

1. First to pay any existing operating deficits, including debt service arrearages of the development;
2. To fund any capital improvements or repairs which are required for the viable operation of the project and cannot be funded out of other reserves at the development;
3. To provide an additional source of operating revenue to assist in financing the normal operations of the project including debt service so that future rent increases can be moderated or so that rents may be maintained, to the extent feasible, at a level which is appropriate to the tenant population for which the development is intended;
4. After the nonprofit has demonstrated, based on information required under N.J.A.C. 5:80-6.4(a)6, that the funds in the PSR are not required for any of the purposes listed in (b)1-3 above and will not be required for the foreseeable future, it may request that a portion of these funds or the investment income on these funds be deposited into a CDE as described in N.J.A.C. 5:80-6.5.

Amended by R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

In (b): deleted "of the fees" in regard to payments.

#### **5:80-6.7 Investment income earned on the PSR, DCE and CDE**

(a) After the payment of the fee specified in N.J.A.C. 5:80-6.4(a)5 the investment income earned on the DCE and CDE may be used:

1. To fund current operating deficits and/or arrearages including debt service arrearages of the development;

2. To pay the partners a return on equity to the extent allowed by law and to the extent not paid from operating revenues of the development, but only if there are no operating deficits or arrearages at the development;

3. In accordance with the designated uses of the accounts or for other purposes requested by the nonprofit and approved by the Agency.

(b) After funding the uses described in N.J.A.C. 5:80-6.6(b)1-3 and the required fee specified in N.J.A.C. 5:80-6.4(a)5, the investment income on the PSR may be utilized in the manner set forth in (a) above.

#### **5:80-6.8 Use of DCE and CDE for development of housing**

(a) In addition to uses permitted under N.J.A.C. 5:80-6.5, 6.6, and 6.7, housing sponsors, or the authorized entity within the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may, with Agency approval, use DCE and CDE funds, and interest thereon, for the development, operation, maintenance, construction, rehabilitation or improvement of or investment in additional housing within the community or in other communities. DCE and CDE funds may only be used for such purposes if the Agency determines that DCE and CDE funds are not needed to insure the financial viability or physical structure of the project. This includes, but is not limited to, a finding by the Agency that the project has surplus cash and that DCE and CDE funds are not needed for providing an additional source of operating revenue to assist in financing any other aspect of the current or future operations of the project.

(b) Housing sponsors, or the authorized entity within the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may use DCE and CDE funds as specified in (a) above or may deposit DCE and CDE funds with the Agency to be used by the Agency or by the Agency in conjunction with other developers for the purposes and under the conditions outlined in (a) above.

New Rule, R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

Renumbered 5:80-6.8, "Additional terms of purchase," to 6.9.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

#### **5:80-6.9 Additional terms of purchase**

(a) The terms and conditions between the selling nonprofit and the purchasing partnership may vary from transaction to transaction. However, the following matter should be considered:

1. The role of the nonprofit in the purchasing partnership must be determined based on the past performance record of the nonprofit and the extent to which it desires to remain actively involved in the development;
2. Deferred purchase payments in the form of a debt owed by the purchaser to the nonprofit will only be

permitted to the extent allowable under applicable bond resolutions and shall incorporate at least the following provisions:

i. That the second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the Agency;

ii. That in the event of declaration of a default on any existing mortgage of the Agency, the debt and all rights thereunder to rent or any other project income or assets shall be assigned to the Agency;

3. Upon sale or refinancing of the development, or upon termination of the mortgage other than by default, any remaining assets of the development may be shared among the nonprofit, other partners, the Agency and municipality to the extent allowed by law.

Renumbered from 5:80-6.8 by R.1989 d.524, effective October 2, 1989.  
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

#### 5:80-6.10 Tax obligations

(a) The partnership shall be responsible for all tax consequences arising out of the sale of the profit.

(b) All existing contractors shall be notified of the sale and of the fact that they shall be responsible for the payment of all New Jersey sales tax and other taxes arising out of the loss of nonprofit status by the owner from the date of closing forward.

Renumbered from 5:80-6.9 by R.1989 d.524, effective October 2, 1989.  
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

#### 5:80-6.11 Approval and disclosure requirements

The Agency specifically reserves the right to investigate and approve any party involved in the transaction including without limitation all limited and general partners, attorneys, syndicators, brokers or consultants, as well as any partners or shareholders thereof. Prior to its approval the Agency may require any party to disclose such information as may be reasonably related to the transaction and may require any party to sign such waivers, releases or affidavits as may be necessary to authenticate or investigate the information requested.

Renumbered from 5:80-6.10 by R.1989 d.524, effective October 2, 1989.  
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

#### 5:80-6.12 Request for use of escrow funds

All uses of escrow funds or the investment income earned thereon must receive written approval by the Agency in accordance with procedures adopted from time to time by the Agency.

Renumbered from 5:80-6.11 by R.1989 d.524, effective October 2, 1989.  
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

#### 5:80-6.13 (Reserved)

Repealed by R.1985 d.241, effective May 20, 1985.

See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Renumbered from 5:80-6.12 by R.1989 d.524, effective October 2, 1989.  
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

### SUBCHAPTER 7. TENANT SELECTION STANDARDS

#### 5:80-7.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Affirmative Fair Housing Marketing Plan” is a plan to attract those people who would least likely apply for residence.

“Disabled person” is a person who is under a disability as defined in Section 223 of the Social Security Act or a person who has a “developmental disability” which is mental in nature as defined by Developmental Disabilities Amendments of 1970 (42 USC 60001).

“Displaced person” is a family or individual who has been displaced by governmental action or otherwise formally recognized pursuant to Federal disaster or otherwise has been involuntarily displaced.

“Elderly family” is one in which the head of household, spouse or sole member is 62 years of age or older, handicapped or disabled.

“Family” is two or more persons sharing residency and related by blood, marriage or operation of law, or who demonstrate a stable relationship which has existed over a period of time.

“Handicapped” is a person having a physical or mental impairment which is expected to be of long continued and indefinite duration and which substantially impedes his or her ability to live independently and which is of such a nature that such ability could be improved by more suitable housing conditions.

“Household” is one or more persons which share or will share a residence.

“Housing needs” is circumstances beyond the control of a family which are not one of the priorities set forth such as substandard housing, overcrowding, living with family or others, dangerous neighborhood, housing unsuitable because of medical reasons, etc.

“HUD” is the United States Department of Housing and Urban Development.

"Minority" is a household of which one or more of whose members are either Black, Hispanic, American Indian or Oriental. A white person would be considered a minority if he were living in a predominantly black neighborhood.

### 5:80-7.2 General policy

(a) The process of screening applicants and selecting future residents is a crucial one. On one hand, a housing owner must keep units occupied to minimize vacancy loss and maintain cash flow. On the other hand, the owner must also take the time to screen applicants and to select only those applicants who will be responsible residents and meet HUD eligibility requirements.

(b) Careless selections can result in vandalism, high repair costs, costly evictions and increases in vacancies. To avoid such problems as much as possible, each owner should develop reasonable tenant selection procedures.

(c) The procedures should be designed to select applicants who will not only meet the tenant eligibility requirements for HUD's subsidy programs but will also be responsible tenants. The procedures should instruct project staff on at least:

1. How to screen tenants;
2. Fair Housing and Equal Opportunity laws;
3. Required preferences and economic mixes;
4. Limitations on admission of single persons and over-income applicants; and
5. How to select tenants from among eligible applicants.

(d) In the case of assisted living residences (ALRs), all ALRs are subject to the New Jersey Department of Health and Senior Services screening requirements as set forth in N.J.A.C. 8:36 and the requirements of the New Jersey Department of Health and Senior Services, Division of Consumer Support and/or the New Jersey Department of Human Services, Division of Medical Assistance and Health Services.

Amended by R.1998 d.80, effective February 2, 1998.  
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).  
Added (d).

### 5:80-7.3 Screening criteria

(a) The Agency supports the owner's desire to select responsible tenants.

(b) Owners are expected to exercise sound judgment in the tenant selection process. The fact that an applicant qualifies for program benefits does not mean that he or she is a suitable tenant.

(c) Owners may consider the following factors when screening applicants. These factors are not all inclusive and

the absence of any of these factors is not sufficient reason to reject an applicant. Costs of credit checks and home visits may be charged as a project expense.

1. Demonstrated ability to pay rent and make timely payment.

2. Comments from prior landlords: Tenants with histories of damaging units are obviously high risks. The endorsement of at least two prior landlords is preferable over the judgment of a present landlord. A responsible tenant may receive a bad recommendation just as a bad tenant might receive a good recommendation from the present landlord. The other landlord's interests are not always the same as the owner's interests.

3. Good credit references: Although the benefits of a credit check are debatable, credit checks may be useful when no rent-paying history is available. However, the lack of a credit history may not automatically disqualify an applicant.

4. Housekeeping habits: So-called "home visits" can be particularly valuable to make certain that the applicant maintains his or her housing unit in an acceptable manner.

### 5:80-7.4 Non-discrimination

(a) Owners must comply with all Federal, State or local fair housing and civil rights laws and regulations and with all equal opportunity requirements set forth in N.J.S.A. 55:14K-1 et seq., Agency regulations, and HUD's administrative procedures. Federal and State laws provide that owners may not discriminate based upon race, color, creed, religion, sex, national origin, age or handicap. Any complaints alleging violations of civil rights laws will be referred to the Agency or to HUD's Regional Offices of Fair Housing and Equal Opportunity for possible compliance actions.

(b) Owners must also comply with requirements imposed in Agency and HUD program statutes, regulations and administrative procedures. These administrative requirements prohibit restrictions on certain classes of persons. Examples of prohibited practices are shown in Exhibit A. This figure is not intended to be all inclusive.

(c) Owners are subject to all civil rights laws and Agency and HUD administrative requirements on non-discrimination. These civil rights laws and administrative requirements apply to the process of accepting applications and selecting tenants from among eligible applicants as well as to the process of assigning units. Under civil rights laws, an owner may not place minority tenants in one part of the project and non-minority tenants in another part.

(d) In partially assisted Section 8 projects (that is, those with less than 100 percent of the units under a Section 8 contract), HUD administratively requires that assisted tenants must be dispersed throughout the project. Note: In projects designed for both elderly and non-elderly families, owners may place elderly and non-elderly families in separate areas of the project.

**5:80-7.5 Priorities and preferences**

(a) Owners may give priority or preference for admission to otherwise eligible applicants in (b) and (c) below so long as such priorities and preferences are consistent with the fair housing laws and the owner's Affirmative Fair Housing Marketing Plan.

(b) Handicapped, disabled, displaced and substandard housing applicants shall be treated as follows:

1. For all units, owners must give preference to applicants who are either living in substandard housing or are displaced by government action or activity.

2. For all units designed specifically for the elderly, owners must give priority to elderly, handicapped and disabled applicants on an equal basis.

3. For all barrier free or partially barrier free units designed specifically for handicapped or disabled persons, owners must give first priority to handicapped or disabled persons who need the modified design to permit them to operate independently with comparative ease under normal circumstances. All other handicapped or disabled persons will be given second priority. The elderly will be given third priority.

(c) Residency preference shall be as follows:

1. While owners may not require local residency as a pre-requisite for admission, with Agency and HUD approval, owners may give priority to residents of the municipality (here defined as the smallest unit of government, that is, town, city, county) in which the project is located.

2. The Agency will approve the use of local residency preferences only if such preferences will not be inconsistent with equal opportunity requirements or frustrate achievement of the goals of the Affirmative Fair Housing Marketing Plan. For example, if the Agency determines that affirmative marketing goals and objectives cannot reasonably be achieved with a residency preference for all units, the Agency may deny a request for use of residency preferences or approve it for only a portion of the units. For example, where the affirmative marketing goal is five or 10 percent of the units in a project, the agency may approve a residency preference for only 95 or 90 percent of the units. Residency preferences may be used during initial rent-up and to fill vacancies occurring subsequent to the rent-up period.

i. When applying residency preferences, persons expected to reside in the municipality as a result of current or planned employment must be counted as residents. "Planned employment" means that an individual has a bona fide offer to work in the municipality.

ii. If there are applicants on the chronological waiting list, the owner may select a resident over a non-resident even if the non-resident is higher on the waiting list or exhibits greater need. However, if there are no eligible residents on the waiting list, an owner cannot hold a unit open until an eligible resident is found.

iii. If certain categories of applicants are targeted on the Affirmative Fair Housing Marketing Plan and if there are insufficient numbers of such applicants who are residents of the municipality, then the owner must solicit those applicants from outside the municipality.

(d) In the case of assisted living residences (ALRs), preferences and priorities may be set according to the New Jersey Medicaid procedures and guidelines or the guidelines of any other insurer that may be paying for the costs of services to the applicant.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (d).

**5:80-7.6 Limitations on admission of over-income tenants**

(a) When applicants who are income-eligible and otherwise qualified are available, the owner may not lease any unit to an applicant whose income exceeds the applicable income limit.

(b) The owner may lease such units to over-income applicants only after he or she has exerted good faith effort to attract income-eligible applicants and such applicants are not available.

(c) Under no circumstances may an owner lease more than 10 percent of the units to over-income applicants without the prior written approval of the Agency.

(d) At BMIR, rent supplement or 236 projects, an owner also must obtain the prior written approval of the HUD or the Contract Administrator.

(e) At Section 8 projects, an owner also must obtain prior written HUD approval, except in older projects where the Section 8 Contract allows up to 20 percent.

(f) Before admitting any over-income applicant in accordance with these regulations, the owner must certify in writing that:

1. He or she has made all assisted units committed under the contract available for occupancy by eligible families;

2. He or she had taken all reasonable steps to attract income-eligible applicants;

3. No income-eligible applicants were available when the over-income applicant was selected for admission.

(g) The owner must retain this certification in the over-income tenant's file.

(h) If an owner fails to comply with the provision of this section, the Agency may invoke any remedies available under N.J.S.A. 55:14K-1 et seq. or Agency regulations. In addition, the HAP contract and/or Section 8 regulations provide that HUD may reduce the number of units under the HAP contract, invoke other remedies available under the contract or consider such failure as grounds for suspension or debarment from HUD programs.



(i) In the case of assisted living residences (ALRs), where the owner has made a good faith effort to attract income-eligible applicants as provided in (b) above but there is no income-eligible applicant available, an ALR owner may be permitted to rent an income-restricted unit to an over-income applicant, provided that:

1. The ALR adheres to the provisions of (a), (c), (f) and (g) above; and
2. The ALR rents the next available non-restricted ALR unit to the next income-eligible applicant who applies.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (i).

### 5:80-7.7 Non-immigrant student aliens

(a) The Housing and Community Development Act of 1980 prohibits HUD from making housing assistance available to non-immigrant student aliens.

(b) A non-immigrant student alien is a person who:

1. Has a foreign residence which he or she has no intention of abandoning;
2. Is a bona fide student qualified to pursue a full course of study; and
3. Was admitted to the United States temporarily and solely for the purpose of pursuing a full course of study at an established institution of learning or other recognized place of study in the United States, particularly designed by him or her and approved by the Attorney General after consultation with the Department of Education of the United States.

(c) Non-immigrant student alien also means the alien spouse and alien minor children of such student as long as the spouse's and children's right to be in the United States depends on the alien's right.

(d) If an applicant identifies himself or herself or his or her spouse as a student the owner must request proof of United States citizenship, and ask the applicant to sign a statement certifying that he or she is not a non-immigrant student alien. An example certification form may be found as Exhibit B.

### 5:80-7.8 Prohibited conditions for admission

(a) In screening applicants for admission, owners may not impose irrelevant admissions criteria that are used to screen out otherwise eligible applicants.

(b) Physical examinations: Owners may not routinely require that all elderly applicants undergo physical examinations as a condition of admission. However, if the owner has reason to believe that the applicant's physical condition is such that his or her admission might have an adverse impact on the rights of other tenants to enjoy their units, or that he or she might not be able to care for the unit and carry out his or her obligations under the lease, the owner

may require the applicant to furnish evidence of his or her ability to live independently (with or without attendant care). In the case of assisted living residences, screening of applicants' physical or medical conditions shall be conducted in accordance with N.J.A.C. 8:36.

(c) Donations or contributions: Owners of rental projects may not require a donation, contribution or membership fee as a condition of admission. Of course, owners of cooperative housing projects may charge membership fees.

### HOUSING AND MORTGAGE FINANCE AGENCY EXHIBIT A EXAMPLE OF PROHIBITED DISCRIMINATION PRACTICES

Class	Civil Rights Laws and Regulations	HUD Statutes, Regulations and Administrative Requirements
Religion, Race, Color, Creed, National Origin	No priorities or application criteria, (e.g. variations in charges or deposits) based upon race, creed, color, religion, or national origin <sup>4</sup> .	
Sex	No renting units to single persons of one sex and not the other	In elderly housing, no discrimination against females/males because disproportionate mixture of sexes
Age	No minimum or maximum ages unless necessary to normal operation (e.g. elderly project), or required by State or local law	No maximum age for elderly. In housing for disabled and handicapped minimum age is 18; no minimum may be set above age 18
Children		In family housing no discrimination against families with children
Class Membership		No discrimination against socio-economic classes (e.g. welfare recipients, single parent households, etc.)
Membership in Sponsoring Organization		No priority to members of sponsoring organizations. No discrimination against nonmembers
Handicapped	No discrimination solely because of handicap	

### Agency Statutes, Regulations and Administrative Requirements

No person shall be discriminated against because of race, religious principles, color, national origin or ancestry by the agency, any housing sponsor, any institutional lender, or any loan originator or agent or employee thereof in connection with any housing project or eligible loan. No persons shall be discriminated against because of age in admission to, or continuance of occupancy in any housing project receiving assistance under this act except for any housing project constructed under a governmental program restricting occupancy of at least 90 percent of the dwelling units to persons 62 years of age or older and any members of their immediate households or their occupant surviving spouses, or constructed as a retirement subdivision or retirement community as defined in the "Retirement Community Full Disclosure Act", P.L. 1968, c.215 (C.45:22A-1 et seq.). Any person who violates the provisions of this section is a disorderly person.

## EXHIBIT B

FORMAT OF ADDENDUM TO APPLICATION  
FOR HOUSING ASSISTANCE

By law, housing assistance cannot be provided to any nonimmigrant student-alien or the alien spouse and minor children of such alien (Section 1436a of Title 42, U.S.C.).

Definition of Nonimmigrant Student-Alien: (1) an alien having a residence in a foreign country which he or she has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who is admitted to the United States temporarily and solely for the purpose of study at an established institution of learning or other recognized place of study in the United States, particularly designated by him or her and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (2) the alien spouse and minor children of any such alien if accompanying him or her or following to join him or her.

I certify that I have read the information above and that I am not a nonimmigrant student-alien, and that no others in my household are nonimmigrant student-alien.

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Date

**WARNING:** Section 1001 of Title 18 U.S.C. provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

Amended by R.1998 d.80, effective February 2, 1998.  
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

In (b), added a third sentence.

SUBCHAPTER 8. OCCUPANCY REQUIREMENTS  
REGARDING INCOME

## 5:80-8.1 General applicability

(a) The rules within this subchapter shall apply to all Agency financed housing projects except as provided in (b) below.

(b) For housing projects assisted by subsidies from the United States Department of Housing and Urban Development, or financed with the proceeds of tax exempt bonds pursuant to the Internal Revenue Code or financed by a loan which is insured or guaranteed by the United States or any agency thereof or financed or assisted, in whole or in part under any program of the United States (collectively "Federal Programs"), the rules, regulations and/or requirements under the Federal Programs for occupancy requirements regarding income shall be used in addition to or in place of, as appropriate, the rules within this subchapter. Reference to any statutes, State or Federal, shall include any amendments or reenactments which have been or may be made as to such statutes.

(c) For purposes of this subchapter, "Family" shall be defined as follows:

1. For projects receiving subsidies under Section 236 or Section 8 Programs, family shall be as defined under the applicable Section 236 or Section 8 rules, regulations or requirements.

2. For all other projects, two or more persons who live or expect to live together as a single household in the same dwelling unit or an individual at least 18 years of age who is not a full-time student.

R.1977 d.71, effective March 4, 1977.

See: 9 N.J.R. 62(c), 9 N.J.R. 164(c).

Amended by R.1983 d.470, effective November 7, 1983.

See: 15 N.J.R. 1212(a), 15 N.J.R. 1860(a).

Increased maximum gross aggregate family income from \$26,850 to \$45,000. Also added new (b).

Amended by R.1985 d.241, effective May 20, 1985.

See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Subsections (c) through (f) added.

New Rule, R.1986 d.258, effective July 7, 1986.

See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).

Amended by R.1994 d.300, effective June 20, 1994.

See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

## 5:80-8.2 Maximum gross aggregate family income

(a) Admission to housing projects shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents whose incomes may be up to seven times the annual rental or carrying charges. Annual rental or carrying charges shall include the value or cost of heat, light, water, sewerage, parking facilities and cooking fuel which are provided to or incurred by the family in connection with its occupancy of a dwelling. In addition, carrying charges include rent normally associated with rental projects as well as other costs associated with cooperative apartments. There may also be included an amount equal to six percent of the original cash investment of the family in a mutual or cooperative housing project and the value or cost of repainting and replacing any fixtures or appliances.

(b) Notwithstanding (a) above, the Agency, in conjunction with any financing, may impose income limits at levels lower than those set forth above.

New Rule, R.1985 d.241, effective May 20, 1985.

See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Amended by R.1986 d.258, effective July 7, 1986.

See: 17 N.J.R. 1620(a), 18 N.J.R. 1454(b).

Recodified from section 1 and substantially amended.

Amended by R.1994 d.300, effective June 20, 1994.

See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

### 5:80-8.3 Occupancy requirements for housing projects

(a) For housing projects financed by the Agency with the proceeds of bonds where the interest is exempt from Federal taxation, and where the Project must contain a certain number of units to be occupied by individuals of low and moderate income pursuant to Section 103(b)(4) of the Internal Revenue Code, at all times during the qualified project period, as defined in Section 103(b)(12)(b), at least 23 percent of the units shall be occupied by individuals of low and moderate income as defined in Section 103(b)(12)(c), except in the case of target area projects where at least 18 percent of the units shall be occupied by individuals of low and moderate income. In allocating the units in a project which shall be occupied by individuals of low and moderate income, the Agency may require the distribution of low and moderate income units among the different sized units to reflect the same percentage distribution as the number of different sized units bears to the total number of units. A greater percentage of the low and moderate income units may, however, be allocated to the larger units. Additionally, low and moderate income units shall be distributed throughout the project such that the tenants of such units will have equal access to and enjoyment of all common facilities of the project. If there are changes in Federal law or in the Internal Revenue Code or regulations with regard to the above-referenced matter, the Agency may adjust the above requirements accordingly.

(b) In assisted living residences financed by the Agency with the proceeds of Agency bonds where the interest on the bonds is exempt from Federal taxation, either not less than 20 percent of the units shall be occupied by individuals whose income is 50 percent or less of area median gross income, or not less than 40 percent of the units shall be occupied by persons whose income is 60 percent or less of area median gross income, at all times during the qualified project period as defined in the Internal Revenue Code (the "income-restricted units"). All ALRs shall reserve five percent of the income-restricted units for occupancy by persons whose monthly income does not exceed 300 percent of the monthly Federal Supplemental Security Income (SSI) benefit amount (which amount is determined and published annually by the Social Security Administration). Income-restricted units shall be distributed throughout the Project such that the residents of such units shall have equal access to and enjoyment of all common areas of the Project.

(c) For assisted living residences financed by the Agency with the proceeds of bonds where the interest is not exempt from Federal taxation, 20 percent of the units shall be set aside for persons whose incomes are 80 percent or less of the area median income. Five percent of the 20 percent of the units set aside shall be reserved for persons whose monthly income does not exceed 300 percent of the monthly Federal Supplemental Security Income (SSI) benefit amount (which amount is determined and published annually by the Social Security Administration).

New Rule, R.1985 d.241, effective May 20, 1985.

See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Amended by R.1986 d.258, effective July 7, 1986.

See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).

Recodified from section 2 and substantially amended.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (b) and (c).

### 5:80-8.4 Special Multiple Family Unit within Housing Projects located in municipalities affected by casino gaming

(a) Special Multiple Family Units may be approved and designated by the Agency in accordance with this Section on application by the Housing Sponsor where the Agency determines the municipality wherein the project is located is experiencing housing shortages as a result of the authorization of casino gaming.

(b) A Special Multiple Family Unit is a dwelling unit specifically designed to accommodate two or more families as defined in N.J.A.C. 5:80-8.1(c), and which has been so certified by the Agency after adequately meeting the following minimum criteria:

1. The dwelling unit has separate sleeping areas, each with adequate privacy, for each family; and
2. The dwelling unit has separate full bathrooms, each with adequate privacy, for each family; and
3. The rental of the dwelling unit complies with all relevant State and local occupancy laws.

(c) For purposes of determining income eligibility for admission into a Special Multiple Family Unit, the gross aggregate family income of each family is to be considered separate and apart from the gross aggregate family income of the other family or families occupying the unit. The full rental and carrying charges of the unit are to be used in determining each family's eligibility for admission, notwithstanding each family's planned or actual percentage contribution toward those charges, provided there is a written consent in the lease holding each family jointly and severably liable for these charges.

(d) A single family is deemed to exist among two or more individuals if those individuals have a joint personal economic relationship, other than their mutual interest in renting the same dwelling unit. Joint ownership of personal assets, commingling of personal accounts, economic depen-

dency among the individuals, and/or the joint filing of income tax returns shall be evidence of a joint personal economic relationship.

(e) The rental of units to families must be consistent with Federal housing and tax laws and/or regulations, where such laws or regulations apply to government-financed developments or Agency tax-exempt bond financing of such developments.

(f) The rental of Special Multiple Family Units, irrespective of the income levels of tenants therein, shall not be considered the rental of units to low and moderate income families for purposes of meeting Federal and State requirements to provide a certain percentage of units for those of low and moderate income, pursuant to N.J.A.C. 5:80-8.3.

New Rule, R.1986 d.258, effective July 7, 1986.

See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).

Amended by R.1994 d.300, effective June 20, 1994.

See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

#### 5:80-8.5 Recertification of income

The procedure for calculation and certification of gross aggregate family income in determining a family's eligibility for admission to a housing project as required under this subchapter shall be conducted as set forth in N.J.A.C. 5:80-20.

Amended by R.1986 d.258, effective July 7, 1986.

See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).

Recodified from section 3 and substantially amended.

Amended by R.1994 d.300, effective June 20, 1994.

See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

### SUBCHAPTER 9. RENTS

#### 5:80-9.1 Purpose

It is the express purpose of the following regulations to promote the statutory functions and obligations of the Agency by ensuring that the rents and/or carrying charges applied in housing projects are sufficient to pay normal operating, maintenance and utility costs; provide an adequate rate of return to individuals or corporations that provide capital to assist in the development of housing projects; provide debt service payments adequate to protect the financial interest of the Agency and its bondholders; provide reserves for repair and replacement; and ensure adequate, safe and sanitary housing for the low and moderate income families that the Agency was created to serve.

Amended by R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Specification added.

#### Case Notes

Rent increase at housing project was adequate and not excessive. In the Matter of the Application for a Rental Increase at Jasontown II Apartments, 96 N.J.A.R.2d (HFA) 1.

#### 5:80-9.2 Applicability

The rules within this subchapter shall apply to all housing projects. In the event the housing project is assisted, directly or indirectly, by the Department of Housing and Urban Development (HUD) or is financed by a loan from the Agency which is insured or guaranteed by the United States, or any agency thereof, the Agency may utilize the rent regulations, requirements or criteria for such project which is prescribed, utilized or required by HUD or such guarantor or insurer. In the event there are any inconsistencies between these rules and the regulations, requirements or criteria of HUD or other United States agency insuring or guaranteeing the Agency loan, the latter shall prevail.

New Rule, R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Old section 9.2, "Rent determination" was recodified to 9.3.

#### 5:80-9.3 Rent determination

(a) At least once each year, each housing sponsor shall make a determination of the rents and/or carrying charges to be applied in the housing project. Hereinafter, the term "rent" shall be construed to include carrying charges and the term "housing sponsor" shall be construed to include a properly authorized representative of the housing sponsor. An annual rent determination shall be made regardless of whether or not a rent increase is being requested.

(b) The rent determination shall be in the form of a resolution or letter from the sponsor.

Amended by R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Text on supporting documentation recodified to 9.4; text on rent determination recodified from 9.2; determination to occur once, at any time, during each year.

#### Case Notes

Proposal for rent increase procedures cited (11 N.J.R. 304); rent varying power under former N.J.A.C. 5:18-1.2; rent control ordinance cannot restrict rent increase approved by State agency for a State financed, supervised and regulated housing project. *Overlook Terrace Management Corp. v. Rent Control Board of West New York*, 71 N.J. 451, 366 A.2d 321 (1976).

#### 5:80-9.4 Rent increase application

(a) Housing sponsors desiring to implement a rent increase of an amount greater than three percent of the current rent, or the increase which would be derived by multiplying the current rent by the increase, if any, in the overall Consumer Price Index for New York-Northeastern New Jersey as published by the United States Department of Labor, Bureau of Labor Statistics as of September 30 of the year preceding the year in which the increase is sought to be implemented, whichever is less, or for a project receiving subsidy, assistance, insurance or guarantee by HUD shall submit a rent increase application to the Agency's Director of Property Management. The application shall consist of the rent determination and the following supporting documents:

1. Name of sponsor, location of housing project, number of apartments of each type;
2. Date of initial occupancy;
3. For Section 236 developments, a status report on the housing project's implementation of its current energy conservation plan;
4. A narrative statement of the reasons for the rent increase;
5. Most recent certified audit report prepared in accordance with Agency regulations;
6. Summary of income and expenses for the preceding 12 month period prepared on an accrual basis for non-federally subsidized housing projects. For all projects with Federal subsidy, monthly operating reports will be required for the preceding three months;
7. Annual budget on which the requested rent increase is based; and
8. Copy of notice to tenants in accordance with N.J.A.C. 5:80-9.6.

(b) In housing projects where there is a valid Housing Assistance Payments contract, in accordance with which rents are or may be adjusted, the sponsor is not required to submit a rent increase application. Rents will be adjusted in accordance with the contract without resort to the rules within this subchapter, except that the sponsor shall still be obligated to make the rent determination as required by N.J.A.C. 5:80-9.3.

(c) In housing projects where there is no Housing Assistance Payments contract or other subsidy, assistance, insurance or guarantee from HUD, the sponsor is not required to submit a rent increase application for an annual rent increase for an amount not greater than the lesser of:

1. Three percent of the current rent; or
2. The increase which would be derived by multiplying the current rent by the increase, if any, in the overall Consumer Price Index for New York-Northeastern New Jersey as published by the United States Department of Labor, Bureau of Labor Statistics as of September 30 of the year preceding the year in which the increase is sought to be implemented.

(d) For projects under (c) above, the sponsor may implement an annual rent increase for an amount not greater than the amount calculated pursuant to this subsection by submitting a letter so notifying the Agency's Director of Property Management at least 30 days prior to implementation of such increase.

Amended by R.1991 d.334, effective July 1, 1991.  
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Text on notice to tenants and cooperators recodified to 9.6; text on supporting documentation recodified from 9.3 and renamed rent in-

crease application; text from old 9.8, on automatic annual adjustments added at (b).

Amended by R.2003 d.128, effective March 17, 2003.

See: 34 N.J.R. 3153(a), 35 N.J.R. 1409(c).

In (a), rewrote the introductory paragraph and inserted "N.J.A.C." following "in accordance with" in 8; added (c) and (d).

#### 5:80-9.5 Additional rent increases in given fiscal year

The submission of a rent increase application for any given fiscal year shall not preclude any sponsor from making additional or revised rent increase applications in the same fiscal year, provided that they are submitted in accordance with all the procedures set forth in this subchapter. Rent increases implemented pursuant to N.J.A.C. 5:80-9.4(c), however, shall not be implemented more than once in any given fiscal year.

Repeal and New Rule, R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Amended by R.2003 d.128, effective March 17, 2003.

See: 34 N.J.R. 3153(a), 35 N.J.R. 1409(c).

Added the last sentence.

#### 5:80-9.6 Notice to tenants and cooperators

(a) Prior to or simultaneous with the submission of the rent increase application pursuant to N.J.A.C. 5:80-9.4(a) to the Agency, each housing sponsor shall provide, in writing, to each tenant and cooperator and conspicuously post at the housing project, a notice, in a form prescribed by the Agency, setting forth the following:

1. The rent determination;
2. A statement that the rent determination is subject to the review and approval of the Agency and, if applicable, subject to the review and approval of HUD;
3. Reasons for the increase;
4. A statement that tenants and cooperators will have 30 days to inspect the rent increase application submitted by the housing sponsor pursuant to N.J.A.C. 5:80-9.4(a); and
5. A statement that written comments on the proposed rents may be submitted to the housing sponsor, managing agent or the Agency's Director of Property Management, at their current address within 30 days of the rent increase application being available for review.

(b) Upon expiration of the comment period, the housing sponsor shall submit a certification to the Agency, in the form prescribed by the Agency, that it has complied with the requirements of N.J.A.C. 5:80-9.6(a).

(c) If the housing sponsor fails to substantially comply with the notice requirement of (a) above, the Agency shall withhold processing of the rent increase application until there is substantial compliance with such requirements.

(d) Upon implementation of an annual rent increase pursuant to N.J.A.C. 5:80-9.4(c), the housing sponsor shall notify each tenant and/or cooperator of the amount and the

effective date of the increase in accordance with the provisions of the tenant's or cooperator's lease.

Amended by R.1991 d.334, effective July 1, 1991.  
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Text on rent schedules approvable by the Department of Housing and Urban Development repealed; text on notice to tenants and cooperators recodified from 9.4; submission attachments specified; (c) added.

Amended by R.2003 d.128, effective March 17, 2003.  
See: 34 N.J.R. 3153(a), 35 N.J.R. 1409(c).

In (a), inserted "pursuant to N.J.A.C. 5:80-9.4(a)" following "rent increase application" in the introductory paragraph and inserted "Property" preceding "Management" in 5; added (d).

#### 5:80-9.7 Agency review

(a) The Agency will review the rent increase application submitted pursuant to N.J.A.C. 5:80-9.4(a) to verify the need for the rent increase requested. If the application contains errors or omissions of a material nature, the Director of Property Management shall require the housing sponsor to submit the corrected or omitted material and provide tenants and cooperators with notice that they will have 15 days to inspect and comment upon the corrected or omitted material.

(b) Within 10 business days after receipt of the complete rent increase application and any comments thereto, the Agency shall:

1. For housing projects receiving subsidies under HUD, submit the rent increase application to HUD for approval pursuant to N.J.A.C. 5:80-9.8;

2. For all other projects submitting a rent increase application pursuant to N.J.A.C. 5:80-9.4(a), process the application in accordance with N.J.A.C. 5:80-9.9 and, if applicable, 5:80-9.10. The 10 business day requirement in (b) above shall not apply to rent increases subject to a hearing as provided by N.J.A.C. 5:80-9.10.

(c) Prior to submission of any rent increase application to HUD, the Agency may attach its comments and recommend a rent increase different from that requested by the housing sponsor. If the Agency reduces or eliminates that portion of the requested increase that would provide return on owner's equity, written notice of such reduction or elimination will be provided to the housing sponsor by the Executive Director of the Agency.

Amended by R.1991 d.334, effective July 1, 1991.  
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Application procedure specified further; tenants given 15 days to inspect documents.

Amended by R.2003 d.128, effective March 17, 2003.  
See: 34 N.J.R. 3153(a), 35 N.J.R. 1409(c).

In (a), inserted "submitted pursuant to N.J.A.C. 5:80-9.4(a)" following "rent increase application" and inserted "Property" preceding "Management" in the introductory paragraph; in (b)2, inserted "submitting a rent increase application pursuant to N.J.A.C. 5:80-9.4(a)" following "For all other projects".

#### 5:80-9.8 Rent increases approvable by the Department of Housing and Urban Development

(a) In all housing projects receiving subsidies under the Section 236 Interest Reduction Payments Program or Section 8 Housing Assistance Payments Program, rent increase applications shall be submitted to and are subject to approval by HUD, unless the rent increase is automatically authorized pursuant to N.J.A.C. 5:80-9.4(b).

(b) Upon verification of the completeness, accuracy and validity of the rent increase application pursuant to its review under N.J.A.C. 5:80-9.7, the Agency will forward the rent increase application to HUD for final action. The Agency will notify the housing sponsor of HUD's final decision.

Repeal and New Rule, R.1991 d.334, effective July 1, 1991.  
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

#### 5:80-9.9 Increases approved by Agency

(a) If the rents are not subject to review and approval by HUD nor subject to automatic annual adjustments pursuant to a valid Housing Assistance Payments contract, then the Executive Director may make or approve a rent increase without a hearing as long as the resulting rents do not exceed the rents in effect for the same units in the housing project at any time in the previous 12 months by more than the combined percentage of paragraphs 1 and 2 below:

1. The percentage increase in the Consumer Price Index for rent and utilities for the most recently preceding 12 month period for which information has been published by the United States Department of Labor; plus

2. Either of:

- i. The percentage, up to a maximum of 12 percent annually, needed to fund operating deficits, debt service arrears or reserves for repair and replacement incurred at the housing project during the preceding 12 months, provided that no part of the rent increase includes an amount allocated toward providing a return on equity to the sponsor; or

- ii. The percentage, up to a maximum of six percent annually, needed to offset an inability to provide a return on equity and to offset operating deficits, debt service arrears or reserves for repair and replacement delinquencies incurred during the preceding 12 months, if all or a portion of the requested increase is intended to pay return on equity.

(b) For housing projects receiving subsidies under the New Jersey Urban Multi-Family Production Program (JUMPP), the Agency shall consider the amount by which the JUMPP subsidy decreases annually, as well as any operating deficits existing after distribution of the annual JUMPP subsidy, in determining the amount of rent increase needed pursuant to (a) above.

(c) The Agency shall provide the housing sponsor with a copy of its calculations done pursuant to (a) above.

Amended by R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Stylistic changes.

Amended by R.1991 d.335, effective July 1, 1991.

See: 23 N.J.R. 646(a), 23 N.J.R. 2058(a).

Clarification of application of requirements to JUMPP added at (b).

#### Case Notes

Citation to former N.J.A.C. 5:80-1.9; defense of rent increase unconscionability not available to tenant in summary dispossession action; agency approval of rent increase can only be reviewed by Appellate Division. *Marine View Housing Co. No. 1 v. Benoit*, 188 N.J.Super. 539, 457 A.2d 1241 (Law Div.1982).

#### 5:80-9.10 Increase subject to hearing

(a) In projects not subject to HUD approval nor subject to automatic annual adjustments, if the Executive Director of the Agency approves a rent increase which exceeds the amounts specified in N.J.A.C. 5:80-9.9(a), in order to cover any purpose including but not limited to operating deficits, debt service arrears, reserves for repair and replacement delinquencies incurred during the preceding 12 months, inability to pay return on equity, increases in permitted return on equity and accelerated amortization of any supplemental financing, then any person, association or corpora-

tion aggrieved by such determination may file for a hearing by submitting a written request to the Executive Director. Housing sponsors shall give written notice to all tenants and cooperators affected by such rent increase approved by the Executive Director and of their opportunity to request a hearing. Persons, associations or corporations aggrieved by the increase must file their request for a hearing within 21 days of said notice.

(b) Upon receipt of a request for a hearing or upon his or her own initiative, the Executive Director shall request that the Office of Administrative Law conduct same. All hearings shall be conducted according to the procedures established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. When the date of the hearing has been established, housing sponsors shall provide notices, in a manner approved by the Agency, of the date, time, place and nature of said hearing to all tenants, cooperators and other persons requesting notice of said hearing. The scope of the hearing shall be limited to consideration of the amount in excess of the increases approvable by the Executive Director under N.J.A.C. 5:80-9.9(a). Upon review of the record submitted by the administrative law judge, the Agency members shall adopt, reject or modify the recommended decision and issue a final written order.





(c) The request for a hearing, or the hearing itself, shall in no way affect or delay the authority of the Executive Director to approve increases up to the amounts specified pursuant to N.J.A.C. 5:80-9.9(a). If the Executive Director approves an amount equal to or less than the amount calculated in accordance with N.J.A.C. 5:80-9.9(a), then no hearing is required.

Amended by R.1991 d.334, effective July 1, 1991.  
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Hearing circumstances specified further; tenant notice requirement added.

#### Case Notes

Defense of rent increase unconscionability not available to tenant in summary dispossession action; objection of unconscionable rent increase proper at hearing under former N.J.A.C. 5:80-1.10; agency approval of rent increase can only be reviewed in Appellate Division. *Marine View Housing Co. No. 1 v. Benoit*, 188 N.J.Super. 539, 457 A.2d 1241 (Law Div.1982).

#### 5:80-9.11 Notice of final approval

(a) Upon final action by HUD or the Agency, the Agency will provide written notice to the housing sponsor of the finally approved rent increase. Such notice will set forth in writing the reasons for the Agency's decision with regard to the finally approved rent increase.

(b) The housing sponsor shall provide written notice of the finally determined rent increase and the reasons for the Agency's decision with regard thereto and, if applicable, the Agency's calculations pursuant to N.J.A.C. 5:80-9.9(a) to all tenants and cooperators, as well as all other interested parties. Written notice shall be provided to each tenant by mail or by hand delivery to the tenant/cooperator's apartment or by personal service and shall be posted in conspicuous places throughout the housing project. Other interested parties may receive a copy of the final notice if they provide a written request for same to the sponsor.

Amended by R.1991 d.334, effective July 1, 1991.  
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Text on notice of hearing repealed; text on notice of final approval recodified from 9.12 and reference to 9.9 added.

#### 5:80-9.12 Effective date of increase

The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants, cooperators and other interested parties which submitted a written request for the notice.

Amended by R.1989 d.591, effective December 4, 1989.  
See: 21 N.J.R. 2160(a), 21 N.J.R. 3748(a).

Changed text from "following the mailing of ..." to "following written" notice.

Amended by R.1991 d.334, effective July 1, 1991.  
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Text on notice of final approval recodified to 9.11; text on effective date of increase recodified from 9.13.

#### 5:80-9.13 Rent increases for low and/or moderate income projects without Federal project-based rent subsidies

(a) Sponsors of housing projects without project-based Federal rent subsidies may elect to implement rent increases in accordance with the rules in this section rather than those in N.J.A.C. 5:80-9.1 through 9.12. The rules within this section may be used only after the owner demonstrates that at least 10 percent of the units are rented to low income families and the balance rented to moderate income families. HUD's definition of low and moderate income families shall be used for the purposes of the following:

1. Sponsors shall submit a written request to the Agency, accompanied by the most recent HUD median income figures and the maximum rents corresponding to the median income figures. The Agency will review and verify the information contained therein and, if accurate, approve the rent increase, up to a maximum of 10 percent for low income units and 20 percent for moderate income units. The Agency will provide written notice of the approval to the Sponsor.

2. Upon approval from the Agency, the Sponsor shall notify tenants in writing. Notice shall be by mail or hand delivery to each tenant's unit or by personal service. The notice shall include the calculation of how the increase was determined pursuant to HUD's increase in median income.

3. The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants.

(b) Sponsors of projects without project-based Federal rent subsidies, which do not meet the low and moderate income unit distribution set forth in (a) above, may elect to convert their project to that unit distribution and thereby be subject to (a)1 through 3 above.

1. Sponsors who elect to convert shall get credit toward the 10 percent low income, 90 percent moderate income unit distribution for any existing tenants meeting such standard. As vacancies occur, the units shall first be rented to fulfill the 10 percent low income requirement and then 90 percent to moderate income families.

2. In the event that any of the 90 percent moderate income units have current rents at less than the maximum moderate income rent, rent increases for the first five years following conversion shall be permitted up to 20 percent per year (without regard to HUD increases in median income) until HUD's maximum moderate income rent is reached. Thereafter, rents shall be implemented pursuant to (a)1 through 3 above.

(c) Low income units shall revert to moderate income units 15 years after the conversion. At such time, rent increases for the next five years shall be permitted up to 10 percent per year (without regard to HUD increases in median income) until HUD's maximum moderate income

rent is reached. Thereafter, rents shall be implemented pursuant to (a)1 through 3 above.

(d) When calculating the maximum rent for low and moderate income units, sponsors shall use the following formula for determining family size:

1. For efficiency units, family size shall be based on a one person household.
2. For all other units, family size shall be based on one and one-half persons per number of bedrooms in the unit.

(e) Sponsors who wish to implement rent increases in excess of those permitted in (a) and (b) above may request such increase in writing. The excess rent increase amount shall be subject to the procedures at N.J.A.C. 5:80-9.4 through 9.12. The entire rent increase amount shall be considered for determining whether or not a hearing is required pursuant to N.J.A.C. 5:80-9.10. No increase may be approved which would increase rents in excess of those permitted by other applicable rent restrictions, for example, low income tax credit restrictions, tax-exempt bond financing restrictions.

New Rule, R.1994 d.301, effective June 20, 1994.  
See: 26 N.J.R. 1188(a), 26 N.J.R. 2570(a).

**5:80-9.14 Resident monthly fee increases for low and/or moderate income-restricted units in assisted living residences (ALRs)**

(a) For the purposes of this section, the term "monthly fee" includes charges for rent, meals and basic services. The Agency shall regulate the monthly fees for all low and moderate income-restricted ALR units. Monthly fees for income-restricted ALR units may not exceed 80 percent of the percentage of HUD median income applicable to that ALR as set forth in the Financing, Deed Restriction and Regulatory Agreement executed by the housing sponsor and the Agency ("applicable HUD median income level"). The foregoing shall not apply to units occupied by persons who have insurance and/or another contracted third-party payor.

(b) Sponsors of ALRs may implement increases of monthly fees with Agency approval as provided in N.J.A.C. 5:80-9.13(a)1 for the income-restricted ALR units, provided that the maximum monthly fee for the income-restricted ALR units may not exceed 80 percent of the applicable HUD median income level. Monthly fee increases for non income-restricted ALR units do not require Agency approval.

(c) When calculating the maximum monthly fees for low and/or moderate income-restricted ALR units, housing sponsors shall use the HUD median income level for the area where the ALR is located, adjusted for family size following the formula below:

1. For efficiency or studio units, monthly fees shall be based on a one person household; and

2. For a one bedroom unit, monthly fees shall be based on a one and one-half person household.

(d) Upon approval from the Agency, the housing sponsor shall notify each tenant and/or designated family member, guardian or community agency of the monthly fee increase by mail or hand delivery to each tenant's unit or by personal service. The notice shall include a calculation of how the increase was determined based upon the applicable HUD median income level.

(e) The new monthly fees shall be effective on the first day of the month following one calendar month's notice to the tenants and/or their designated representatives.

New Rule, R.1998 d.80, effective February 2, 1998.  
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

**SUBCHAPTER 10. LOANS TO LENDERS FOR SINGLE FAMILY MORTGAGE LOANS**

**5:80-10.1 Authority**

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K-11(b), whereby the Agency may make loans to institutional lenders in order to furnish funds to make eligible loans, provided such loans are authorized by Federal Taxation Laws.

**5:80-10.2 Requests for loans**

(a) The Agency shall provide a loan application to each mortgage lender located within any particular area of the State for which the Agency has determined that there is an inadequate supply of single family mortgage loans. Alternatively, the Agency may notify mortgage lenders of a proposed loan program and provide a loan application only to those mortgage lenders requesting the same. Such application shall be sent to mortgage lenders at least 14 days in advance of the date all such applications must be submitted to the Agency. The loan application shall be in the form prescribed by the Agency and shall contain, among other things:

1. Provision for the mortgage lender to state the maximum amount of loan requested;

2. The date by which the loan application must be submitted so as to be considered for an allocation of loan funds and the date upon which loans will be awarded by the Agency;

3. Provision for the mortgage lender to furnish information regarding the mortgage lender's deposit and mortgage activity during a time period prescribed by the Agency;

4. The terms and conditions of the loan including, among others, the maximum interest rate, the term, the percentage of the principal to be paid each year or the manner of determining principal payments, and the prepayment terms;

5. The terms and conditions of the reinvestment of the loan proceeds, including:

- i. The type of single family mortgage loan;
- ii. Maximum sales price or loan amounts;
- iii. Minimum or maximum mortgage terms;
- iv. Maximum income levels for owners or occupants;
- v. Location;
- vi. Loan to ratio value; and
- vii. Number of units;

6. The schedule of any fees and charges of the Agency with respect to loans; and

7. An undertaking by the mortgage lender to take any loan granted by the Agency up to the amounts specified in the application and providing for liquidated damages or other remedies in the event that the mortgage lender does not take such loan.

#### **5:80-10.3 Allocation of loans**

In allocating funds available for loans, the Agency shall consider, among other things, the credit worthiness of the mortgage lender submitting loan applications, the adequacy of supply of single family mortgage loans in the areas in which the mortgage lender operates, and the mortgage and deposit activity reported in the loan application. Allocations of loan funds by the Agency shall be conclusive.

#### **5:80-10.4 Award of loans**

The amount of loan awarded to each mortgage lender shall be promptly confirmed by the Agency to such Mortgage Lender. Thereupon each such mortgage lender shall be obligated to take such loan in accordance with the terms thereof. The obligations of the Agency to make any loan or loans shall be, in each case, subject to the sale and issuance of bonds of the Agency within the period prescribed by the loan application in an amount sufficient to make the loans which shall be awarded.

#### **5:80-10.5 Interest and other terms of loan**

Loans shall bear interest at a rate which shall not exceed the maximum rate of interest specified in, or determined in accordance with the provisions of the loan application. Other terms of the loans shall comply with the loan application, the Act and the provisions of any contract with holders of outstanding bonds of the Agency. Each loan shall be evidenced by a note in the forms prescribed by the Agency.

#### **5:80-10.6 Collateral for loans**

(a) As security for the payment of the principal of an interest on each loan to a mortgage lender, collateral in an amount at least equal to the collateral requirement shall be assigned in trust to the Agency and maintained by such mortgage lender, all in accordance with an assignment of collateral and trust agreement in the form prescribed by the Agency which shall be entered into by the mortgage lender with the Agency at such time as the Agency shall require.

(b) The collateral for each loan to a mortgage lender may be held by such mortgage lender in accordance with and subject to the terms of the Act and said assignment of collateral and trust agreement.

(c) Each mortgage lender shall service or cause to be serviced and preserve the collateral securing its loan or loans from the Agency at its own expense in accordance with said assignment of collateral and trust agreement.

(d) The collateral shall be valued periodically by the Agency or a person or institution designated by the Agency in accordance with the provision of the assignment of collateral and trust agreement relating to such collateral.

#### **5:80-10.7 Application of loan proceeds; restriction as to single family mortgage loans**

(a) The terms of each loan shall require that the proceeds thereof paid to the mortgage lender be segregated from its other funds, and that such mortgage lender shall, within the time period specified in the loan agreement relating to such loan, make and disburse from such loan proceeds, single family mortgage loans to individuals only. The Agency may require that such new single family mortgage loans be restricted in certain areas of the State if the Agency determines that such areas are in particular need of loan funds.

(b) Each such single family mortgage loan shall comply with such terms and conditions as shall be prescribed by the Agency in connection with the loan application therefor.

(c) The aggregate principal amount of such single family mortgage loans made by a mortgage lender from such loan proceeds shall at least equal the amount of such loan proceeds. All such single family mortgage loans shall be made pursuant to written commitments issued subsequent to the date of the submission by the mortgage lender of its loan application. Such written commitments shall specify the maximum interest rate which will be borne by the single family mortgage loan and must state that such loan covered by the commitment is to be funded out of the proceeds of a loan from the Agency. Reports by mortgage lenders as to the application of loan proceeds shall be made at such time and in such manner as shall be provided by the terms of the loan.

(d) Such single family mortgage loans may be made by the mortgage lender either directly or through one or more agents. All loans made by a mortgage lender through an agent shall be made pursuant to a written agreement between such mortgage lender and such agent which agreement shall have been approved in writing by the Agency. The Agency may decline to approve any such agreement for any reason which it, in its sole discretion, deems sufficient. The Agency may require any such agreement to provide, among other things, the following:

1. Such agreement shall not take effect until the approval of the Agency is endorsed on an executed copy thereof;

2. All single family mortgage loans made thereunder shall be made in the name of the mortgage lender pursuant to written commitments issued in the name of the mortgage lender subsequent to the date of the Agency's approval of such agreement;

3. The Agency shall have the right to inspect the books and records of the agent appointed pursuant to such agreement at any and all reasonable times;

4. No compensation or fees of any kind shall be paid to or charged by the agent in connection with any single family mortgage loan made pursuant thereto except as therein specifically set forth;

5. All commitments issued by an agent shall be subject to the same requirements as hereinabove set forth for mortgage lenders.

#### **5:80-10.8 Restrictions on return realized by mortgage lenders**

The Agency may in the case of loans to be made from any issue of bonds of the Agency establish maximum rates of return which may be realized by any mortgage lender or any agent of any mortgage lender from the single family mortgage loan made from the proceeds of loans and may regulate, limit, restrict, or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the making of any single family mortgage loan.

#### **5:80-10.9 Fees and charges of the Agency; loan account**

(a) An initial fee may be established by the Agency in connection with loans to be made from the proceeds of any issue of Agency bonds, and collected by the Agency as and for a discount below par with respect to each such loan. The initial fee shall be for the purpose of reimbursing the Agency for all or part of its reasonably expected administrative costs of issuing such Agency bonds and making the loans.

(b) The Agency may establish such other premiums, penalties, fees and charges, as it in its sole discretion shall determine to be necessary in connection with the prepayment of, or any default on, or any default under any agreements relating to, any loan or loans.

#### **5:80-10.10 Purchase of Agency bonds**

No mortgage lender (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue

Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the amount of the Agency loans to be made to such mortgage lender (or related person, as aforesaid) by the Agency.

### **SUBCHAPTERS 11 THROUGH 12. (RESERVED)**

### **SUBCHAPTER 13. MAKING OR PURCHASING ELIGIBLE LOANS FOR SINGLE FAMILY MORTGAGES**

#### **5:80-13.1 Authority**

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K-12c, whereby the Agency may make, purchase or participate in the purchase of eligible loans in order to encourage the development, operation, construction, improvement and rehabilitation of affordable housing.

#### **5:80-13.2 Commitment applications**

(a) The Agency shall make available to all mortgage sellers who request a form of commitment application for each proposed program to purchase single family mortgage loans at least 14 days in advance of the date all such applications must be submitted to the Agency. The commitment application shall be in the form prescribed by the Agency and shall contain, among other things:

1. Provision for the mortgage seller to state the maximum principal amount of single family mortgage loans which the mortgage seller offers to the Agency;

2. The date by which the commitment application must be submitted to the Agency in order to be considered for an allocation of funds and the date by which commitments will be accepted by the Agency;

3. Form of the proposed mortgage purchase agreement and mortgage servicing agreement;

4. Provision for the mortgage seller to furnish information regarding its mortgage loan origination and servicing activities during a time period to be prescribed by the Agency;

5. Provision for liquidated damages to be paid or other penalties to be incurred by the mortgage seller in the event that it fails to execute or perform under the mortgage purchase agreement for the commitment accepted by the Agency; and

6. Provision for payment by the mortgage seller of a commitment fee in an amount prescribed by the Agency as consideration for the Agency's acceptance of the commitment application and agreement to purchase mortgage loans from the mortgage seller.

#### 5:80-13.3 Allocation of commitments

In allocating funds available to meet the commitments requested by mortgage seller, the Agency shall consider, among other things, the amounts of the commitments requested by the various mortgage sellers, the adequacy of supply of single family mortgage loans in the areas in which the mortgage sellers propose to originate mortgage loans, the financial strength and stability of the mortgage seller, the mortgage loan originating and servicing activity reported in the commitment application and the ability of the mortgage sellers to originate and/or service single family mortgage loans under the terms and conditions of the mortgage purchase agreement and the mortgage servicing agreement.

#### 5:80-13.4 Execution of mortgage purchase agreement, mortgage servicing agreement; Term Sheet; Notice of Acceptance

The Agency and each mortgage seller will enter in a Mortgage Purchase Agreement and Mortgage Servicing Agreement stating the conditions under which sellers will originate and the Agency will purchase mortgage loans financed under this Section. The Agency will provide a Term Sheet for each mortgage program which shall set forth the terms of all loans, mortgage delivery period and other requirements. All loans originated under a commitment allocation must conform to the requirements of the Term Sheet which shall be incorporated into the Mortgage Purchase Agreement by reference. The amount of the allocation provided to each mortgage seller for each program shall be set forth in a Notice of Acceptance.

#### 5:80-13.5 Eligible neighborhoods

The Agency may designate special areas of the State in which the purchase of mortgage loans by the Agency will best effectuate the general purposes of the Act and the objectives of expansion of supply of funds in the State available for single family mortgage loans, provision of additional housing needs to remedy the shortage of adequate housing in the State and elimination of substandard dwellings. If the Agency makes such a designation, special allocations and conditions may be imposed or waived for single family mortgage loans in these areas.

#### 5:80-13.6 Limitations on loans

The Agency may set limitations on the principal amounts of a mortgage loan or upon the incomes of homebuyers in any area to effectuate the purposes of the Act.

#### 5:80-13.7 Regulation of points charged by mortgage sellers

The Agency may regulate, limit, restrict or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the origination of mortgage loans by mortgage sellers to be purchased by the Agency.

#### 5:80-13.8 Refinancing of pre-existing single family mortgage loans

(a) The Agency shall not acquire any single family mortgage loans made for the purpose of refinancing pre-existing single family mortgage loans. However, a mortgage loan made by a mortgage seller to finance the substantial rehabilitation of property upon which there is a pre-existing mortgage loan may include the refinancing of the pre-existing mortgage loan and still qualify as a single family mortgage loan under the following conditions:

1. At least 50 percent of the proceeds of the single family mortgage loans made by the mortgage seller shall be used to pay for labor and materials used to rehabilitate the property;
2. The single family mortgage loan shall be made only to a person determined in advance by the Agency to be a person of low or moderate income;
3. The economic facts and circumstances of the mortgagor and the property are such that the rehabilitation could not have been financed by other means;
4. The mortgage seller delivers to the Agency a certificate executed by the mortgage seller certifying that it reasonably believes, based upon prior investigation, that the conditions above have been met and that the refinancing of the pre-existing mortgage loan is incidental and necessary to the purpose of accomplishing the rehabilitation of the property and stating the facts and circumstances upon which the determination in (a)3 above was made; and
5. The executive director of the Agency determines and certifies that the facts and circumstances in the mortgage seller's certificate support the conclusion that the refinancing of the pre-existing mortgage loan is incidental and necessary to the purpose of accomplishing the rehabilitation of the property.

#### 5:80-13.9 Purchase of Agency bonds

No mortgage seller (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the amount of the mortgage loans to be purchased from such mortgage seller (or related person, as aforesaid) by the Agency.

**5:80-13.10 Return on equity for eligible loans**

For each eligible loan made for owner-occupied structures of four dwelling units or less, there is no general restriction on the rate of return which the owner may receive on its investment whether from rental of the other units in the structure or on sale of the property. However, the Agency may establish limitations on the rate of return on investment for owner-occupied, one to four family units, either at the time of the making of the original loan or upon the sale, of all or a portion of the property and improvement, upon a finding that such restrictions are necessary to assure the continued use of the property for individuals of low to moderate income.

## SUBCHAPTER 14. MAKING OR PURCHASING ELIGIBLE LOANS FOR SINGLE FAMILY HOME IMPROVEMENT

**5:80-14.1 Commitment applications**

(a) Upon request, the Agency shall make available to all mortgage sellers a single family home improvement loan application form. Such form shall be provided at least 14 days in advance of the date all such applications must be submitted to the Agency. The single family home improvement loan application shall contain, among other things:

1. Provision for the mortgage seller to state the maximum principal amount of single family home improvement loans which the mortgage seller offers to the Agency;
2. The date by which the commitment application must be submitted to the Agency in order to be considered for an allocation of funds and the date by which program commitments will be accepted by the Agency;
3. A form of the proposed note purchase agreement to be executed by the mortgage seller; and
4. Provision for the mortgage seller to furnish information regarding its residential loan origination activities during a time period to be prescribed by the Agency.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

In (a), inserted "family" following "single" in 1.

**5:80-14.2 Allocation of commitments**

(a) In allocating funds available to meet the commitments requested by mortgage sellers, the Agency shall consider, among other things:

1. The amounts of the program commitments requested by the various mortgage sellers;
2. The adequacy of supply of affordable single family home improvement loans in the areas in which the mort-

gage seller proposes to originate single family home improvement loans;

3. The financial strength and stability of the mortgage seller; and
4. The residential loan originating activity reported in the commitment application and the ability of the mortgage seller to originate single family home improvement loans under the terms and conditions of the note purchase agreement.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

**5:80-14.3 Execution of note purchase agreement**

Upon notice of acceptance by the Agency to a mortgage seller of all or a portion of the home improvement loan program commitment requested by it, the Agency shall specify the date by which the Agency shall execute the note purchase agreement executed by the mortgage seller.

**5:80-14.4 Unsecured single family home improvement loans**

Single family home improvement loans which are not secured by a mortgage on the property being improved or rehabilitated shall be limited to loans specified in the Term Sheet for each single family Home Improvement Loan Program fully insured under the Federal Housing Administration Title I Property Improvement Loan Program.

**5:80-14.5 Eligibility requirements**

The Agency may designate income and other limitations with respect to persons eligible to receive single family home improvement loans and with respect to the use of proceeds of single family home improvement loans by such persons, which limitations may vary according to geographical area, in order that the purchase of single family home improvement loans by the Agency shall best effectuate the general purpose of the Act and the objectives of expansion of the supply of funds in the State available for single family home improvement loans, provision of additional housing needed to remedy the shortage of adequate housing in the State and elimination of substandard and energy inefficient dwellings. The Agency may set limitations on the principal amounts of single family home improvement loans to effectuate the aforesaid purposes of the Act.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

**5:80-14.6 Regulation of points charged by mortgage sellers**

The Agency may regulate, limit or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the origination of single family home improvement loans by mortgage seller to be purchased by the Agency.

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

#### 5:80-14.7 Refinancing of pre-existing debt

The Agency shall not acquire any single family home improvement loans made for the purpose of refinancing pre-existing debt.

#### 5:80-14.8 Purchase of Agency bonds

No mortgage seller (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the amount of the single family home improvement loans to be purchased from such mortgage seller (or related person, as aforesaid) by the Agency.

### SUBCHAPTERS 15 THROUGH 16. (RESERVED)

### SUBCHAPTER 17. PREVAILING WAGES

#### 5:80-17.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K-42.

#### 5:80-17.2 Applicability of prevailing wages

(a) Prevailing wage rates shall be paid in the construction or rehabilitation of housing projects the construction or rehabilitation of which is fully or partially financed by a loan from the Agency by all housing sponsors or builders, contractors or subcontractors engaged by housing sponsors, except as may be provided under the provisions of N.J.A.C. 5:80-1.4 or N.J.S.A. 55:14K-5y. The Agency may also require prevailing wage rates to be paid in connection with the operation, repair or improvement of any housing project or in conjunction with the construction or rehabilitation of any improvement or development financed by a loan from the Agency.

(b) Prevailing wage rates required to be paid pursuant to (a) above shall be determined in accordance with N.J.S.A. 55:14K-42.

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

In (a), inserted "the construction or rehabilitation of which is fully or partially financed by a loan from the Agency" following "rehabilitation of" in the first sentence.

### SUBCHAPTER 18. DEBARMENT AND SUSPENSION FROM AGENCY CONTRACTING

#### 5:80-18.1 Definitions

When used in this subchapter, the following terms shall have the following meanings:

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Agency contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for the Agency, other than by virtue of State or Agency employment, or to supply anything to or perform any service for a private or public person where Agency provides substantial financial assistance and retains the right to approve or disapprove the cost, nature or quality of the goods or service or the persons who may supply or perform the same.

"Debarment" means an exclusion from the New Jersey Housing and Mortgage Finance Agency (Agency) contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

"Person" means any natural person, company, firm, association, corporation or other entity that is engaged in or offers or proposes to be engaged in Agency contracting.

"Suspension" means an exclusion from Agency contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

Amended by R.1990 d.247, effective May 21, 1990.

See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).

Definitions of agency contracting and person added.

#### Case Notes

Cited as former codification N.J.A.C. 5:80-4.1. New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

#### 5:80-18.2 Causes for debarment of a person(s)

(a) In the public interest, the Agency may debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty.



3. Violation of any Federal or State antitrust statute or of the Federal Anti Kickback Acts, 18 U.S.C. § 874, 40 U.S.C. § 276 c.

4. Violations of any of the laws governing the conduct of elections of the Federal Government, of the State of New Jersey, or of its political subdivisions.

5. Violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., or of the Act banning discrimination in public works employment, N.J.S.A. 10:2-1 et seq., or of the Act prohibiting employment discrimination by industries engaged in defense work, N.J.S.A. 10:1-10 et seq.

6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor.

7. Violations of any laws governing the conduct of occupations or professions or regulated industries.

8. Violations of any other laws which may bear upon a lack of responsibility or moral integrity.

9. Willful failure to perform in accordance with contract specifications or within contractual time limits.

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person to be debarred.

11. Violation of contractual or statutory provisions regulating contingent fees.

12. Any other cause affecting responsibility as an Agency contractor of such serious and compelling nature as may be determined by the Agency to warrant debarment, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts.

13. Debarment by some other department or agency in the Executive Branch.

14. Debarment by the Department of Housing and Urban Development, Federal Housing Administration or any other instrumentality, agency or department of the United States Government.

15. Any violation of the prohibited activities listed at N.J.A.C. 5:80-18.8(a) or failure to report violations of prohibited activities as required under N.J.A.C. 5:80-18.8(b).

Amended by R.1985 d.559, effective November 4, 1985.

See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).

(a)12 deleted text "including such conduct as may be proscribed by the laws or contracts enumerated in this section".

(a)14 added.

Amended by R.1990 d.247, effective May 21, 1990.

See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).

Text at 15 added.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

In (a), changed U.S.C. reference in 3, rewrote 5, and substituted "occurred" for "occupied" following "performance has" and inserted "to be" following "the person" in 10.

#### Case Notes

Offenses indicating lack of business integrity or honesty as grounds for disbarment (citing former codification N.J.A.C. 5:80-4.2). New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

#### 5:80-18.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 5:80-18.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, unless otherwise required by law, and shall be rendered in the best interests of the State.

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance, in deciding whether debarment is warranted.

4. The existence of a cause set forth in N.J.A.C. 5:80-18.2(a)1-8 shall be established upon the rendering of a final judgment or conviction, including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 5:80-18.2(a)9-12 and 15 shall be established by evidence which the Agency determines to be clear and convincing in nature.

6. Debarment for the cause set forth in N.J.A.C. 5:80-18.2(a)13 and 14 shall be proper, provided that one of the causes set forth in N.J.A.C. 5:80-18.2(a)1-12 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

Amended by R.1990 d.247, effective May 21, 1990.

See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).

References to 5:80-18.2(a)14 and 15 added at (a)6 and (a)5.

**5:80-18.4 Procedures; period of debarment; scope of debarment affecting the debarment of a person(s)**

(a) The Agency in seeking to debar a person or his affiliates shall furnish such party with a written notice:

1. Stating that debarment is being considered;
2. Setting forth the reasons for the proposed debarment; and
3. Indicating that such party will be afforded an opportunity for a hearing if he so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act. However, where another department or agency has imposed debarment upon a party, the Agency may also impose a similar debarment without affording an opportunity for a hearing, provided that the Agency furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(b) Debarment shall be for a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in his behalf to explain why the additional period of debarment should not be imposed.

(c) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the members of the Agency upon their own action or upon recommendation by the Executive Director of the Agency upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the causes for which the debarment was imposed.

(d) A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

(e) The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

Amended by R.1985 d.559, effective November 4, 1985.  
See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).

(d) substantially amended; (e) added.  
Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

**Case Notes**

Affiliates controlled directly or indirectly by offender also subject to debarment (citing former codification N.J.A.C. 5:80-4.4). New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

Suspension of defendants from agency contracting pending formal debarment hearing constitutional (citing former codification N.J.A.C. 5:80-4); suspension to run from original notice of suspension rather than from date of final agency decision (appeal modification). New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

**5:80-18.5 Causes for suspension of a person(s)**

In the public interest, the Agency, upon approval of the Attorney General, may suspend a person for any cause specified in N.J.A.C. 5:80-18.2 or upon a reasonable suspicion that such cause exists.

**Case Notes**

Cited as former codification N.J.A.C. 5:80-4.5. New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

**5:80-18.6 Conditions for suspension of a person(s)**

(a) The following conditions concerning suspension are to be adhered to:

1. Suspension shall be imposed only upon approval of the members of Agency, upon their own action or upon recommendation by the Executive Director of the Agency, and upon approval of the Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, and at the discretion of the Attorney General, and shall be rendered in the best interests of the State.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 5:80-18.2(a)1-8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 5:80-18.2(a)1-13 may be the basis for the imposition of a concurrent suspension by the Agency, which suspension may be imposed when found to be in the best interest of the State.

**5:80-18.7 Procedures; period of suspension; scope of suspension affecting the suspension of a person(s)**

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by the Agency.

1. Upon approval of the Attorney General, the Agency, may suspend a person or his affiliates, provided that within 10 days after the effective date of the suspension, the Agency, provides such party with a written notice:

- i. Stating that a suspension has been imposed and its effective date;
- ii. Setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;
- iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and
- iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he so requests, or a statement declining to give such reasons and setting forth the Agency's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Agency, the latter shall note that fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

4. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such person.

Amended by R.1985 d.559, effective November 4, 1985.

See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).

(a)3 substantially amended; (a)4 added.

**5:80-18.8 Prohibited activities of persons; reporting requirement**

(a) In order to ensure that all persons meet a standard of responsibility which assures the Agency, the State and its citizens that such persons will both compete and perform honestly in their dealings with the Agency and avoid conflicts of interest, all persons are prohibited from engaging in the following activities:

1. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Agency member or employee or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such member or employee, or to any partnership, firm, or corporation with which such member, employee or member of their immediate family is employed or associated, or in which such member or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

2. No person shall, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Agency member or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Agency. No person shall, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to any individual, firm or entity with which such member or employee is employed or associated or has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the member or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

3. No person shall influence, or attempt to influence or cause to be influenced, any Agency member or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said member or employee.

4. No person shall cause or influence, or attempt to cause or influence, any Agency member or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the person or any other individual or entity.

(b) All persons shall report to the Attorney General of New Jersey and the Executive Commission on Ethical Standards the solicitation of such persons of any fee, commission, compensation, gift, gratuity or other thing of value by an Agency member or employee.

(c) The prohibited activities in (a)1 through 4 above shall not be construed to prohibit a person from offering or giving gifts to or contracting with an Agency member or employee, nor be construed to prohibit an Agency member or employee from receiving gifts from or contracting with a person, and shall not be grounds for debarment pursuant to N.J.A.C. 5:80-18.2(a)15, provided that such activities are offered or made under the same terms and conditions that are available to members of the general public and are consistent with any rules promulgated by the Executive Commission on Ethical Standards.

(d) The Agency shall include the prohibited activities and reporting requirements in (a) and (b) above in requests for proposals by the Agency and in all contracts with every person.

New Rule, R.1990 d.247, effective May 21, 1990.

See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

In (a)2, substituted "shall" for "may" following "person" throughout.

#### Case Notes

Cited as former codification N.J.A.C. 5:80-4.8. New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

### 5:80-18.9 Extent of debarment and suspension

The exclusion from Agency contracting by virtue of debarment or suspension shall extend to all contracting and subcontracting within the control or jurisdiction of the Agency including any contracts which utilize Agency funds. When it is determined by the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, to be essential to the public interest, and upon filing of a finding thereof with the Attorney General and, in the case of suspension, upon approval of the Attorney General, an exemption from total exclusion may be made with respect to a particular Agency contract.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

### 5:80-18.10 Prior notice by the Agency

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given by the Agency to the Attorney General and Treasurer.

### 5:80-18.11 List of debarred and suspended

The Agency shall supply to the State Treasurer a monthly list of all persons having been debarred or suspended in accordance with the procedures prescribed herein, including the effective date and term, if any, of such debarment or suspension. Such list shall at all times be available for public inspection.

### 5:80-18.12 Discretion

Nothing contained herein shall be construed to limit the authority of the Agency to contract or to refrain from contracting within the discretion allowed by law.

### 5:80-18.13 Lists of other agencies

Notwithstanding the failure of the Agency to debar or suspend any person or contractor pursuant to these regulations, whenever the Agency participates in any program financed, issued or guaranteed by any department, agency or instrumentality of the United States Government, it may rely on and distribute lists of persons suspended or debarred by such agency, department or instrumentality and prevent the listed person from participating in that program.

New Rule, R.1985 d.559, effective November 4, 1985.

See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).

## SUBCHAPTER 19. WAIVERS

### 5:80-19.1 Waivers

Any party desiring a waiver or release from the express provisions of any of the regulations in this chapter may submit a written request to the Agency to the attention of the Executive Director. Waivers may be granted only by the Agency Board when such waiver would not contravene the provisions of N.J.S.A. 55:14K-1 et seq. and upon a finding that, in granting the waiver, the Board will be promoting the statutory purposes of the Agency.

## SUBCHAPTER 20. CERTIFICATION AND RECERTIFICATION OF INCOME

### 5:80-20.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K-8b.

### 5:80-20.2 General applicability

(a) Regulations within this subchapter shall apply to all housing projects financed by a loan from the Agency.

(b) In addition to (a) above, if a unit within a housing project is assisted by subsidies provided by the United States Department of Housing and Urban Development, (HUD) such as Section 8 (Housing Assistance Payments) and Section 236 (Interest Reduction Payments) of the National Housing Act of 1937, or is financed pursuant to Section 103(b)(4) of the Internal Revenue Code, or is financed by a loan from the Agency which is insured or guaranteed by the United States or any agency thereof, then any additional Federal regulations, if applicable, regarding certification and recertification of income shall also apply to the unit. In such cases, the Housing Sponsor shall notify families that they are residing in housing projects which are subject to such Federal regulation. In the event there are any inconsistencies between the regulations in this subchapter and said Federal regulations, the Federal regulations shall prevail.

(c) References to any statutes, State or Federal, within this subchapter include any amendments which have been or may be made to such statutes.

(d) "Income-restricted units" means the percentage of units in a housing project where occupancy is restricted to low-or moderate-income tenants pursuant to the requirements of the Agency or the Internal Revenue Code and will qualify the housing project for tax-exempt bond financing and/or Federal low-income housing tax credits.

(e) "Market-rate units" means all units in a housing project financed by the Agency where tenant income and occupancy are governed only by the requirements of N.J.S.A. 55:14K-8 and N.J.A.C. 5:80-8.2(a).

Amended by R.2001 d.82, effective March 5, 2001.  
See: 32 N.J.R. 4166(a), 33 N.J.R. 781(a).

Added (d) and (e).

### 5:80-20.3 Documentation

(a) Each family applying for admission to or occupying an income-restricted unit within a housing project shall provide information and documentation which verifies, to the satisfaction of the Agency, gross aggregate family income. The documentation which the Agency shall require families to submit to housing sponsors may include but is not necessarily limited to:

1. A copy of the first page of their most recent Federal income tax return, or a signed certification stating that no tax return was filed;
2. Permission for the Agency and Housing Sponsor to contact the Internal Revenue Service for additional information which is necessary to verify gross aggregate family income and/or copies of the first page of a family's income tax returns;
3. Verification of employment;
4. Check stubs from employers, pensions, annuities, social security, unemployment, public assistance and workers' compensation;
5. A copy of any court order for alimony and/or child support;
6. Confirmation of income from assets (for example, bank statements).

(b) For market-rate units only, a written statement by the applicant(s) or tenant(s) certifying that aggregate family income does not exceed the maximum income limits prescribed by N.J.A.C. 5:80-8.2 may be accepted as sufficient verification of income.

(c) In addition to the documentation required pursuant to this section, any family applying for admission to or occupying a unit within a housing project assisted by subsidies provided by HUD, such as Section 8 and 236, and/or financed pursuant to Section 103(b)(4) of the Internal Revenue

Code, may be required to submit additional documentation as required by Federal regulations regarding certification and recertification of income.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Amended by R.2001 d.82, effective March 5, 2001.

See: 32 N.J.R. 4166(a), 33 N.J.R. 781(a).

In (a), substituted "an income restricted" for "a"; added a new (b) and recodified former (b) as (c).

### 5:80-20.4 Calculation of income

(a) For families applying for admission to or occupying a unit which is assisted by HUD subsidies such as Section 8 and 236 or families occupying a unit within a housing project financed pursuant to Section 103(b)(4) of the Internal Revenue Code, where such unit is restricted to families of low and moderate income as defined in Section 103(b)(12)(C), gross aggregate family income shall be calculated in accordance with applicable Federal regulations.

(b) For all other families, gross aggregate family income shall be calculated by the total annual income of all family members, from whatever source derived, including but not limited to pension, annuity, retirement and social security benefits. However, the calculation for gross aggregate family income shall not include such income as the Agency determines may be excluded. Such excludable income shall include but is not limited to the following:

1. Income from a dependent minor under 18 years of age, who is not the head of household or spouse of the head of household;
2. Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard or worker's compensation policies, and settlements for personal or property losses;
3. For income from dependents who are secondary wage earners but who are not included within (b)1 above, such wages up to a maximum of \$3,000.

(c) The calculation of gross aggregate family income with regard to (b) above, shall include an allowance of \$480.00 for each dependent minor under 18 years of age who is not the head of household or spouse of the head of household.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

### 5:80-20.5 Recertification periods and procedures

(a) Family income shall be recertified on an annual basis for:

1. Families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236.
2. Families occupying a unit within a housing project financed under Section 103(b)(4) of the Internal Revenue Code where such unit is restricted to families of low and moderate income as defined in Section 103(b)(12)(C).

(b) Family income shall be recertified at least every three years but not more than once each year, for all other families not included within (a)1 or 2 above.

(c) Housing sponsors shall notify each family in writing, not more than 100 days and not less than 91 days prior to expiration of a family's lease, that they must recertify family income. Such notification shall include but is not necessarily limited to:

1. A statement that families must recertify within 30 days of the notice;
2. A list of the documentation required for recertification;
3. A statement that families who fail to recertify income are subject to provisions set forth in N.J.A.C. 5:80-20.6, such statement including a description of such provisions;
4. A statement that after recertification, families whose income is in excess of the Federal or Agency maximum income limit may be subject to provisions set forth in N.J.A.C. 5:80-20.7, such statement including a description of such provisions.

(d) After recertification, housing sponsors shall calculate a family's gross aggregate family income. If there will be an adjustment in HUD subsidy or imposition of a surcharge as provided by N.J.A.C. 5:80-20.7, housing sponsors shall provide families with notice at least 30 days prior to the expiration of the lease. If requested by families, housing sponsors shall provide an explanation of how they calculated the family's income and arrived at the adjustment of subsidy or imposition of a surcharge. Housing sponsors must submit all family recertification calculations and supporting documents to the Agency at least 30 days prior to the expiration of a family's lease.

(e) The Agency shall review the recertification calculations and supporting documents and notify the Housing Sponsor of its approval or any adjustments to the calculations within 30 days of receipt. If the review results in an adjustment which will decrease or further decrease a family's HUD subsidy or impose or increase a surcharge, Housing Sponsors shall provide the family with an additional 30 days notice prior to implementing such adjustment.

(f) Failure of the housing sponsor to comply with the time requirements in (c) and (d) above shall not relieve families of their obligation to complete their recertification within 30 days of receiving notice to recertify.

(g) Housing sponsors shall provide a written acknowledgment indicating the documents submitted, if requested at the time of submission.

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

#### Case Notes

Regulations requiring housing project sponsor to follow specific procedure in notifying tenants about recertifying their income and possibility of eviction upon failing to do so did not apply only to noncertifying tenants whose income made them ineligible to remain tenants. *N.C. Housing Associates, No. 100 v. Hightower-Cooper*, 281 N.J.Super. 317, 657 A.2d 478 (L.1995).

#### 5:80-20.6 Failure to recertify

(a) Any family which fails to recertify income after notification pursuant to this subchapter shall be subject to the following:

1. For families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236, such subsidies shall be terminated as needed to comply with applicable Federal regulations.
2. For all other families, they shall be subject to imposition of surcharges pursuant to N.J.A.C. 5:80-20.8, and may also be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

(b) Families subject to the provisions in (a) above, upon satisfactory completion of recertification, may have subsidies restored, provided said subsidies are available, or may, with Agency approval, have surcharges removed. Surcharges paid to the Agency for failure to recertify, as required by N.J.A.C. 5:80-20.8(d), may be returned, with Agency approval, if satisfactory completion of recertification is made within six months of the notice to recertify. Neither the agency nor the housing sponsor is responsible for the return of surcharges paid to the municipality.

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065 (a).

#### 5:80-20.7 Adjustments in tenancy

(a) For families occupying a unit assisted by HUD subsidies such as Section 8 and 236, upon recertification, families whose income is in excess of the maximum income limit under applicable federal regulations are subject to adjustment or termination of HUD subsidies as needed to comply with applicable Federal regulations.

(b) For all other families, upon recertification, those whose income is in excess of the maximum income limit under N.J.A.C. 5:80-8.2 may be subject to surcharges pursuant to N.J.A.C. 5:80-20.8, and may also be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

(c) Upon recertification, Housing Sponsors must assure that the project contains the required number of low and moderate income families as required by N.J.A.C. 5:80-8.3.

#### 5:80-20.8 Surcharges

(a) Upon recertification, if the gross aggregate family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80-8.2 by 25 percent or less, the family shall continue to occupy the unit without the imposition of any surcharges. If the gross aggregate family income exceeds the maximum income limit by more than 25 percent, the family may continue to occupy the unit, subject to payment of a surcharge as outlined in (c) below. Such surcharges may only be imposed with approval of the Agency. When imposing surcharges, housing sponsors shall give families notice that they may be subject to eviction if their income continues to exceed the maximum income limit for six months from the expiration of the family's lease.

(b) Families subject to surcharges for failing to complete the recertification process (see N.J.A.C. 5:80-20.6) shall be surcharged at the maximum rate outlined in (c) below and may also be subject to eviction in accordance with N.J.A.C. 5:80-20.9. Sponsors shall provide families with notice at least 30 days prior to the expiration of the lease that a

surcharge will be imposed for failure to recertify. Such surcharges or eviction actions require Agency approval.

(c) Surcharges imposed shall be based upon a family's unit rent in accordance with the following schedule:





**Percentage that Gross Aggregate Income exceeds the Maximum Income Limit****Surcharge on Unit Rent**

Up to and including 125%	None
In excess of 125% up to and including 130%	5%
In excess of 130% up to and including 135%	10%
In excess of 135% up to and including 140%	15%
In excess of 140% up to and including 145%	20%
In excess of 145% up to and including 150%	25%
In excess of 150%	30%

(d) Housing sponsors shall pay the surcharge to the municipality granting tax exemption to the project but only up to an amount that, together with payments made to the municipality in lieu of taxes and for any land taxes, equals 25 percent of the total rents or carrying charges of the project for the current and any prior years that the project has been in operation. For projects on which the Agency has made a loan financed with the proceeds of bonds issued prior to January 1, 1973, any remainder of the surcharge or the total surcharge, if tax exemption has not been granted, shall be paid into the Agency's housing finance fund securing the bonds issued to finance the project. For projects financed on or after January 1, 1973, any remainder of the surcharge or the total surcharge, if tax exemption has not been granted, shall be paid to the Agency.

(e) Surcharges shall be imposed upon expiration of the lease provided families have received 30 days notice pursuant to N.J.A.C. 5:80-20.5. Families which have not received 30 days notice prior to lease expiration shall not have surcharges imposed until the 30 day notice has expired.

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

**5:80-20.9 Eviction**

(a) Families who fail to recertify income following notification pursuant to N.J.A.C. 5:80-20.5 may, with Agency approval, be evicted by the housing sponsor if such failure continues for at least six months after expiration of the lease.

(b) Upon recertification, families whose gross aggregate family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80-8.2 by more than 25 percent and continues to do so for at least six months after expiration of the lease may, with Agency approval, be evicted by the housing sponsor.

(c) Prior to eviction under this section, Housing Sponsors must provide families with written notice at the end of the six month period indicating that eviction procedures will begin unless they recertify within 10 days of the notice and show that family income has decreased below the maximum income limit. Families who fail to recertify within the 10 days or upon recertification are in excess of the maximum income limit may be evicted by following the provisions of N.J.S.A. 2A:18-61.1 et seq.

(d) In the case of tenants of income-restricted ALR units, neither failure to recertify nor income exceeding the maximum income limit shall be cause for eviction. However, the next available nonincome-restricted ALR unit shall be rented to an income-eligible tenant and shall be deemed an income-restricted ALR unit thereafter.

Amended by R.1998 d.80, effective February 2, 1998.  
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (d).

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

**5:80-20.10 Confidentiality**

Housing sponsors shall maintain files on the certification and recertification of family income at the project. Such files are to be kept as confidential and shall not be accessible to nor shall information contained therein be disclosed to any person except authorized representatives of the housing sponsor, the Agency and, if applicable, HUD. Housing sponsors shall require identification from each person claiming authority to review such confidential files and maintain a list of individuals who have been provided access to same. If a housing sponsor is not satisfied that a person requesting review has proper authority, review shall be denied and the matter referred to the Agency for final determination. Any copies of family files sent to the Agency pursuant to the certification or recertification process shall be maintained in the same confidential manner. If requested by a family at the time of submission, submitted material shall be returned to a family when it is no longer needed.

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065 (a).

Inserted "and, if applicable" following "Agency" in the second sentence.

**SUBCHAPTER 21. TRANSFER OF SERVICING OF SINGLE FAMILY MORTGAGE LOANS****5:80-21.1 General applicability**

(a) The rules set forth within N.J.A.C. 5:80-21.1 through 21.4 shall apply to all servicers of Agency single family mortgage program loans upon:

1. Sale or transfer of a majority interest in the servicing company or entity;
2. Sale or transfer of a majority ownership interest of the holding company;
3. Sale or transfer of the portfolio of Agency loans to another service; or
4. Merger.

(b) The rules within this subchapter shall also apply to any change in the servicer's organizational structure, which in the Agency's determination, amounts to the type of

transfer specified in (a) above. In determining whether a change in the servicer's organizational structure is a transfer subject to these rules, the Agency may consider:

1. Name change of servicer;
2. Change of location of servicer;
3. Staff changes by servicer;
4. Legal or other significant organizational changes in the servicer's structure; and
5. Compensation paid to the servicer.

(c) The rules within this subchapter shall not apply to loan originators who are not servicers or to newly originated loans that are being transferred from the originating lender to an approved servicer.

Amended by R.1997 d.523, effective December 15, 1997.

See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

Rewrote (a)1 through (a)3, inserted (a)4 and (b)5; and in (c), extended the exception to newly originated loans transferred to an approved servicer.

#### 5:80-21.2 Agency review and approval of transfer

(a) No servicer may enter into any transfer as specified in N.J.A.C. 5:80-21.1 without obtaining prior written consent of the Agency. Approval of all transfers shall be made by the Executive Director of the Agency.

(b) In order for a transfer to be approved, the successor servicer must meet all of the following requirements:

1. Is a currently approved Agency seller/servicer and has a demonstrable ability to service an Agency portfolio, of the size to be transferred;
2. Have a net worth consistent with the standards set forth by the Federal National Mortgage Association (FNMA) and acceptable to bond insurers, where applicable;
3. Have a servicing portfolio of at least \$25 million in total outstanding principal balances.
4. Be an approved servicer for the FNMA or Federal Home Loan Mortgage Corporation (FHLMC). If the servicer is not FNMA/FHLMC approved, the Agency reserves the right to make its own determination;
5. Have current certified financial statements and servicing and delinquency statistics that are satisfactory to the Agency;
6. Completion of the participation application to the satisfaction of the Agency;
7. Completion of the Agency's Questionnaire for Servicing Transfers to the satisfaction of the Agency. This form must also be completed by the transferring servicer;
8. Evidence of fidelity insurance, errors and omission insurance and other insurance required by the Agency;

9. If a successor servicer is an existing Agency servicer, there must be a record of acceptable servicing performance, as determined by the Agency; and

10. Be approved by any entity which has provided insurance for the specified bonds, if required by that entity.

(c) In addition to the requirements in (b) above, the successor servicer shall meet all requirements of the Agency's General Resolution and other documents issued in connection with the sale of bonds from which the financing for the serviced loans has been provided.

Amended by R.1997 d.523, effective December 15, 1997.

See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

Renamed the section; rewrote (b)1 and (b)2; in (b)3, deleted the requirement that the servicing portfolio contain at least 200 loans, and increased the minimum portfolio size to \$25 million dollars; and added (b)10 and (c).

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

#### 5:80-21.3 Compensation adjustment due on transfer

(a) The compensation paid to the Agency shall be adjusted upon sale or transfer by a servicer of Agency loans. At the time of the transfer, the servicer shall pay to the Agency an amount equal to three times the service fee earned for the month during which the transfer occurs.

(b) Compensation adjustment shall not be paid on loans in foreclosure or loans in default over 60 days.

(c) The compensation adjustment set forth in (a) above shall not apply to:

1. Newly originated loans sold or transferred by sellers (originators) who are not Agency approved servicers;
2. Servicers of portfolios with 150 loans or less that are transferring their entire Agency portfolio;
3. Servicers who are subject to a servicer's agreement that provides for compensation adjustment of amounts less than those provided by these rules; and
4. Loan sale or organizational transactions for which no compensation is involved.

Amended by R.1997 d.523, effective December 15, 1997.

See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

Renamed the section; rewrote (a); in (b) substituted "Compensation adjustment" for "A transfer fee" and added (c).

#### 5:80-21.4 Subsequent transfers

(a) The rules within this subchapter and all terms and conditions of the then current agreements between the Agency and the transferring servicer shall apply in their entirety to any subsequent transfers by servicers who became successor servicers under the provisions of these rules.

(b) Successors servicers shall assume and abide by all the terms, including compensation adjustments, of the applicable mortgage servicing agreements on the loans being serviced unless different terms are agreed to in writing by the successor servicer and the Agency. Portfolio records shall be delivered to the successor, including, but not limited to, current and past status, escrow balances, and prepayment and curtailment information. Transferor and transferee shall fully indemnify the Agency against losses or claims resulting from the transfer.

Amended by R.1997 d.523, effective December 15, 1997.  
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

In (a), inserted a reference to agreements between the Agency and the transferring servicer; and in (b), inserted the second sentence.

#### **5:80-21.5 Termination of servicing by Agency**

(a) The Agency may terminate the servicing agreement with a servicer with or without cause. If termination is without cause the Agency shall pay to the servicer 50 basis points of the outstanding principal loan balance of any loan that is less than 84 months old and that is not in default by 60 or more days. No compensation shall be paid for any loan that is older than seven years.

(b) If the Agency terminates the servicing agreement with cause, in accordance with the agreement, no compensation adjustment shall be paid unless the Agency permits the

servicer to transfer servicing, in which case the rules set forth in N.J.A.C. 5:80-21.1 through 21.4 shall apply.

(c) In the event that the Agency terminates the servicing agreement, the servicer shall compensate and indemnify the Agency for losses to the Agency or for which the Agency becomes responsible, which are attributable to the servicer. In addition, the servicer shall not receive a compensation adjustment as may have otherwise been provided under (a) above, unless the servicer shall have first made the Agency whole. The servicer shall not be permitted to set off any compensation adjustment under (a) above against its obligations to the Agency.

New Rule, R.1997 d.523, effective December 15, 1997.  
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

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## **SUBCHAPTER 22. AFFIRMATIVE FAIR HOUSING MARKETING**

### **5:80-22.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.



"Applicant" means one or more individuals, corporations, partnerships, associations, labor organizations, or public entities applying for financing or funding assistance from the New Jersey Housing and Mortgage Finance Agency.

"Disabled person" means a person who is unable, due to a physical or mental impairment, to engage in any gainful activity under a disability as defined in section 223 of the Social Security Act or a person who has a "developmental disability" which is mental in nature as defined by the Developmental Disabilities Amendments of 1970 (42 U.S.C. 60001).

"Displaced person" means a family or individual who has been displaced by government action or other formally recognized action pursuant to Federal disaster or otherwise has been involuntarily displaced.

"Eligible household" means a household whose eligibility requirements are determined in accordance with the program regulations under which the project is financed.

"Housing market area" means that geographic region from which it is likely that renters/purchasers would be drawn for a given multifamily rental housing project or single family sales unit. For projects financed under the Affordable Housing Program the housing market area may be considered a housing region as determined by the Council on Affordable Housing. In most instances the housing marketing area consists of the county in which the project or homes will be located.

"Initial rent-up" means that period beginning with the date on which the applicant is granted permission by the local government and the Agency to begin occupancy or rent-up and ending on the date sustaining occupancy (usually 95 percent) is attained.

"Low income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require a portion of the units to be occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the applicable housing market area. Other housing programs require units to be affordable to the aforementioned population.

"Moderate income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require that a portion of the units be occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the applicable housing market area. Other housing pro-

grams require units to be affordable to the aforementioned population.

"Minority" means an individual who is a member of one of the following racial or ethnic groups:

1. Black: An individual having origins in any of the Black Racial groups of Africa but not of Hispanic origin;
2. American Indian or Alaskan Native: An individual having origins in any of the original people of North America, and who maintains cultural identification through tribal affiliation or community recognition;
3. Hispanic: An individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race; or
4. Asian or Pacific Islander: An individual having origin in any of the original peoples of the Far East, Southeast Asia, and the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

"Target group" means identifiable segments of the eligible population identified by the applicant as least likely to apply for occupancy. An applicant undertakes special outreach to attract members of these groups to the housing being offered. Examples include specific racial/ethnic groups.

#### **5:80-22.2 Purpose of the Affirmative Fair Housing Marketing Plan**

(a) The Affirmative Fair Housing Marketing Plan (the Plan) is a marketing strategy designed to attract buyers and/or renters of all majority and minority groups regardless of sex, to rental projects and sales dwellings, which are being marketed by an applicant. The Plan describes initial advertising and other marketing activities which inform potential buyers and renters of the existence of the units.

(b) More than one Plan may be required in housing developments where there is a combination of market and low and moderate income units or where there is a combination of sales and rental housing.

(c) The Plan remains in force throughout the life of a multifamily project. For single-family dwellings located in subdivisions of five or more units, the Plan remains in effect until all of the dwellings are sold.

(d) No application for Agency assistance may be funded without an approved Plan.

(e) Upon approval, the applicant is required to make good faith efforts to carry out the provisions of the Plan.

(f) In formulating the Plan the applicant shall do the following:

1. Refer to the demographic statistics for the applicable housing market area and identify the segments of the eligible population which are least likely to apply for housing without special outreach because of such factors as neighborhood customs, price, institutionalized discrimination in the housing market and other factors which have the effect of denying housing choice.

2. Design an outreach program which will have the best chance of producing a prospective occupant pool reflective of the racial/ethnic composition of the population of the housing market area and which includes special measures designed to attract those groups identified as least likely to apply and other efforts designed to attract persons from the total eligible population.

3. Establish as one indicator of marketing effectiveness the racial/ethnic composition of the low and moderate income population of the housing market area, and identify any other indicators to be used to measure the effectiveness of the marketing program.

4. Demonstrate capacity to provide training and information to sales and/or rental staff on fair housing laws and objectives.

#### 5:80-22.3 Who submits a plan

(a) The following applicants are required to submit an Affirmative Fair Housing Marketing Plan:

1. Any applicant applying for funding under the Affordable Housing Program;
2. Any applicant applying for funding under the Continuing Care Retirement Community Program;
3. Any applicant applying for funding under the Repair Loan Program;
4. Any applicant applying for funding under the Agency's Policies and Procedures for Housing Projects;
5. Any applicant applying for funding allocations for special projects consisting of 25 or more units; and
6. Assisted living residences applying for funding for projects consisting of 25 or more units.

(b) Projects receiving assistance from the Federal government are subject to the Affirmative Fair Housing Marketing Guidelines established and enforced by the U.S. Department of Housing and Urban Development. However, copies of the HUD approved Affirmative Fair Housing Marketing Plan must be on file with the Agency prior to the issuance of a "firm commitment."

Amended by R.1998 d.80, effective February 2, 1998.  
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).  
In (a), added 6.

#### 5:80-22.4 Plan submission deadlines

(a) The Plan must be submitted as part of the application for Agency financing for those projects financed under the Agency's Policies and Procedures for Housing Projects, Repair Loan Program and Continuing Care Retirement Community Program.

(b) For assistance under the Affordable Housing Program, the applicant must submit an approval Plan prior to fund reservation. The Agency will, however, defer to those procedures which are different from those procedures stated herein for projects subject to a court ordered settlement and/or consent order.

#### 5:80-22.5 Format of the Affirmative Fair Housing Marketing Plan

(a) The applicant shall provide the following information:

1. Name and address of both the applicant and the proposed project;
2. Number of units and the application number;
3. Price and/or rent of units and range of affordability by household size of prospective purchasers and/or renters;
4. Census tract or affordable housing region in which the project will be located;
5. The household types to be served by the project, for example, the elderly, non-elderly;
6. The approximate starting date for advertising to target groups and for initial occupancy; and
7. Name of managing/sales agent.

#### 5:80-22.6 Direction of marketing activity

(a) The applicant is responsible for the development and the implementation of the Affirmative Fair Housing Marketing Plan. For projects financed under the Affordable Housing Program, the municipality may work with the applicant to help identify those persons who are least likely to apply. However, the applicant has ultimate responsibility for the units' marketing and sales/rental transactions. Employment of a sales or management agent does not relieve the applicant of these responsibilities and the applicant must assure that such agents will carry out affirmative marketing and non-discrimination requirements.

(b) The applicant shall identify the groups that are least likely to apply for housing. For these groups, special outreach is required to inform them of the upcoming housing opportunities.

(c) The applicant shall describe efforts to reach target groups that are not covered elsewhere in the Plan. Such groups may include female-headed households and the working poor.

(d) If the applicant believes that no single group will need special outreach, the applicant so indicates in the Plan and explains the reasons for such determination.

(e) In determining which groups may require special outreach, the applicant should consider, as appropriate, the following factors:

1. The possible existence of practices or policies of discrimination on the basis of race, color, creed, religion, sex, or national origin, which have historically affected the ability of members of particular groups to obtain the housing of their choice. These practices or policies can include exclusionary zoning practices which may have limited the construction of housing for lower income families; lending and/or appraisal practices and other practices which may have resulted in discrimination on the basis of race, color, creed, sex, or national origin. Information on these practices may be found in court decisions, compliance findings, newspaper articles or other sources which illustrate patterns relating to these practices.

2. Any known fact about the effects of the language barrier upon potential homeseekers and/or renters whose native language is not English. Examples of such homeseekers include Hispanic and Vietnamese.

3. The racial/ethnic composition of defined geographic areas and comparable projects of comparable size within the housing market. Information regarding these factors may be found in the Housing Assistance Plan (HAP), US Census Reports or Regional Housing Needs Reports approved by the Affordable Housing Council. Furthermore, the applicant should consider the income of the eligible population of the housing market area including, where applicable, those persons expected to reside in the community because of planned employment and current employment.

4. Income eligibility requirements affect the selection of tenants/purchasers from the segments of the eligible population that might be targeted for special outreach and effect the marketing technique to be used in attracting such persons to the housing.

5. The racial/ethnic composition of the group of persons who are not residents, but who may reasonably be expected to reside in the community in the future because of present or planned employment.

#### 5:80-22.7 Marketing program

(a) The marketing program shall include the following:

1. The applicant shall describe the marketing program and outline the methods to be used in reaching all segments of the eligible population; and

2. The marketing program must include special outreach steps which will be taken to attract the groups

identified in the Plan as persons least likely to apply for housing.

(b) The applicant shall indicate the commercial media to be used, if any, to advertise the availability of housing. The use of commercial media is not required; however, the applicant should publicize the availability of housing through the type of media customarily used by the applicant, including minority publications or other minority outlets which are available in the housing market area.

(c) If the applicant does not intend to use any commercial media, the Plan should explicitly indicate that no commercial media will be used and the reasons for this decision should be attached to the Plan.

(d) The applicant shall indicate the type of media to be used, including:

1. Newspapers for general circulation;

2. Radio stations;

3. Television stations; or

4. Other types of media, including publications of limited circulation such as neighborhood-oriented weekly newspapers, religious publications, and the publications of local real estate industry groups.

(e) For each of the media selected, the applicant shall indicate:

1. The name of the media;

2. The type (for example, classified, display) and size of the newspaper advertisement and the initial date of its appearance. If copies of such advertising are available, the applicant should submit them to the Agency. If no copies are available at the time the Plan is being prepared, the applicant shall submit them as soon as possible after the Plan has been approved;

3. The frequency and length of any radio and/or telephone advertising; and

4. The identity of the racial/ethnic group within the audience or readership of the commercial media to be used.

(f) Applicants are encouraged to use minority-owned and/or operated media as part of their overall marketing program to publicize the housing to both majority and minority persons. Where Blacks, Hispanics, and other racial/ethnic minority groups have been identified as special outreach groups, minority-owned media may be a particularly effective outreach mechanism. Even when such groups are not being specifically targeted for special outreach efforts, the use of minority owned media is recommended as part of the outreach to the general population. In such cases, the applicant may consider factors such as data on the racial/ethnic composition of the majority-owned medias'

readership or audience and applicant's past experience in utilizing such media.



(g) The applicant should consider using brochures as part of the total marketing program. Brochures can be tailored to meet specific housing information needs of those persons who are members of groups identified as least likely to apply for the housing. The brochure can also contain a greater quantity of information about the project or subdivision than that contained in mass media advertising.

1. A brochure may include a range of information which influences decisions regarding housing choice, for example, price/rent; proximity to schools; transportation; shopping, and employment centers; the availability of medical facilities for disabled persons.

2. The brochure should communicate the applicant's equal housing opportunity policy.

(h) Signs are another means of advertising. The applicant must indicate the size of any existing or proposed permanent project site sign. This sign must include the equal opportunity housing logo. The applicant must indicate the size of the logo. A photograph of the project sign must be submitted with the Plan or be submitted as soon as possible after erection of the sign.

#### 5:80-22.8 Community contact

(a) Community contacts can supplement formal communications media for the purpose of soliciting tenants/buyers. The applicant shall include only those individuals or organizations that have direct and frequent contact with those groups identified earlier in the Plan as least likely to apply. The applicant shall choose community contacts on the basis of their position of influence within the general community and the particular target groups.

(b) Examples of suitable community contacts include:

1. Fair housing organizations and local non-profit housing associations, housing counseling agencies, regional tenant referral services;

2. Minority organizations (NAACP, Urban League), women's organizations, religious institutions, civil rights groups, editors of majority-owned and minority-owned newspapers;

3. Local government agencies which are in a position to make referrals of potential homeseekers and/or renters to the project or subdivision;

4. Real estate industry related groups such as local real estate boards, Community Housing Resource Boards, organized pursuant to HUD voluntary agreements with the National Association of Realtors and the National Association of Real Estate Brokers; and

5. Local employment centers, including large industrial and commercial employers, labor unions, hospitals, and educational institutions.

(c) The applicant shall give the following information regarding the community contacts:

1. Name of the organization or individual;
2. The racial/ethnic identification of the group or individual;
3. The approximate date the group or individual is to be contacted. This date should be consistent with the requirements for advance marketing to those persons least likely to apply where applicable;
4. The address and telephone number of the person to be contacted;
5. The methods of contact, for example, community meetings, briefing sessions by the applicant and community organizations brochures, walking or bus tours of the proposed housing, radio talk shows; and
6. The specific functions the group will perform.

#### 5:80-22.9 Future marketing activities for rental units only

(a) The applicant shall describe the types of activities to be undertaken after the completion of initial occupancy of rental units in order to fill vacancies resulting from normal turnover.

(b) The applicant may undertake the same marketing activities which were performed during the initial occupancy. A modified Plan may reflect a reduced level of marketing activity as units are available only through turnover and may reflect changes in the media, community contacts or procedures in order to continue a marketing approach that is consistent with the Affirmative Fair Housing Marketing objectives.

(c) Examples of such marketing activities which may be performed following the initial rent-up can include the use of advertising media which may be targeted to the same groups previously identified as least likely to apply for the housing without special outreach, or to different groups chosen on the basis of need to encourage their greater representation in the prospective occupant pool. The media advertising can be similar in content and format to that used during the initial rent-up or can be changed by adjusting the scale of the advertising program.

(d) The applicant may use brochures and/or site signs to publicize the project after initial rent-up has been completed. The applicant may elect to eliminate community contacts altogether or may use contacts such as churches, local businesses, civic groups, the local government or individual community leaders as distributors of brochures or as information sources about the project. Participation in the regional tenant referral clearing house operated by local real estate industry, Public Housing Authorities (PHAs), fair housing groups or public agencies is also encouraged. Such services match prospective homeseekers and/or renters with vacant units of suitable size or price.

**5:80-22.10 Assessment of marketing efforts**

(a) The applicant shall describe the indicators to be used in measuring the effectiveness of the marketing efforts. Measuring effectiveness is an integral part of the applicant's Affirmative Fair Housing Marketing strategy, and the indicators selected should be consistent with other actions the applicant plans to undertake.

(b) The applicant may estimate the possible racial/ethnic composition of the prospective occupant pool which may be anticipated as a result of the marketing efforts including special outreach activities undertaken in accordance with the Plan. The prospective occupant pool should reflect the racial/ethnic composition of the housing market area.

(c) The applicant may estimate the distribution by race/ethnicity of the projected tenant population or owner population resulting from both the implementation of marketing activities and the tenant or homeowner selection process. Under no circumstances is this statement of anticipated occupancy results to be used as a quota in the tenant/owner selection process.

**5:80-22.11 Composition of the prospective occupant pool**

(a) In determining the anticipated racial/ethnic composition of the prospective occupant pool or tenant/homeowner population the applicant must consider any of the following factors as appropriate:

1. Physical characteristics of the proposed project or subdivision including:

- i. Project size, that is, number of units;
- ii. Distribution of units by bedroom size;
- iii. Household type to be served by the housing, that is, nonelderly families or elderly persons;
- iv. Income eligibility requirements;

v. The demographic characteristics of the housing market area in which the project or subdivision is to be located including the racial/ethnic composition.

2. Demographic changes (social and economic) in the housing market area in which the project is to be located may result from publicly or privately financed revitalization activities which may displace lower income persons and encourage the immigration of higher income persons. Demographic changes may also result from housing practices which are illegal such as racial "redlining" by financial institutions, residential appraisals based on the racial composition of the neighborhood or the offering of financial incentives to sell homes because of racial or ethnic groups moving into the neighborhood (blockbusting).

**5:80-22.12 Demographic characteristics of income eligible population in need**

Applicants shall include data on any newly assisted project that may also be available at the time of occupancy of the proposed project. Such data should include project size and location, stage of construction, and anticipated dates of initial marketing activity and initial occupancy.

**5:80-22.13 Residency preferences**

(a) Residency preferences are generally prohibited in housing financially assisted by the Agency. The use of residency preferences as part of a project tenant selection and assignment procedure may be permitted under certain circumstances such as a court ordered settlement and/or consent order with prior approval of the Agency. In these instances, prior approval of the Agency is required, and the residency preferences may be used in such a manner that housing opportunity will not be denied to any particular group.

(b) In connection with housing assisted under the Fair Housing Act, residency preferences shall be limited to the indigenous need portion of the community's housing obligation, but not more than 50 percent in any one project.

(c) In formulating the request for a residency preference, the applicant should calculate the size of the potential population of households eligible for the proposed housing and should also indicate the potential population of eligible households or families identified as expected to reside in the housing area because of present or planned employment. Using the results of this calculation, the applicant should then determine whether an eligible population of residents exists which contains sufficient numbers of households from both majority and minority groups to yield a prospective occupant or tenant/homeowner pool. If such a population does exist, the owner may confine the marketing to that jurisdiction and all the units in the project can be subject to the preference. If, however, an insufficient number of one or more categories of eligible households exists within the jurisdiction the applicant should open marketing to the entire market area.

(d) In formulating the request for residency preference the applicant may use data on the housing assistance needs of particular segments of the eligible population contained in the local Housing Assistance Plan, the Census Bureau's census of population and housing reports which gives statistics on income for each SMSA by race, and other locally compiled data sources such as regional planning agency reports and locally performed census counts.

**5:80-22.14 Staff experience and instructions for fair housing training**

(a) The applicant shall indicate whether it has had any experience in marketing housing to the group(s) identified as least likely to apply.

(b) The applicant is responsible for instructing all employees and agents in writing and verbally concerning non-discrimination in housing. Instructions regarding fair housing requirements and objectives should also be a continuing part of the agenda of staff meetings or other regular orientation activities carried on for sales and rental staff.

(c) The applicant shall submit a copy of the instructions given to submanagement staff on fair housing concerns such as Federal, State, or local housing laws, and the applicant's Affirmative Fair Housing Marketing Plan. These materials should indicate the date established for conducting such training and the name and title of the person responsible for developing the fair housing training program.

#### **5:80-22.15 Other indicators of successful implementation**

The applicant may describe indicators other than the projected racial/ethnic composition of the prospective occupant pool or the tenant population. These indicators can measure the effectiveness of various components of the Plan such as the advertising methods, the outreach activities targeted toward the group identified as least likely to apply or the use of community contacts.

#### **5:80-22.16 Approval of the Affirmative Fair Housing Marketing Plan**

(a) In the event that the Plan is deficient, the Agency will notify the applicant of the nature of the deficiencies and request any additional information. Copies of approved plans will be distributed as follows:

1. Original to the applicant;
2. A copy to be maintained by the Agency's Minority Affairs Coordinator;
3. A copy to be maintained in the Management Division; and
4. For projects financed under the Affordable Housing Program, a copy to the respective community and the designated developer.

(b) The letter of approval to the applicant will include the following information:

1. The procedure to follow in notifying the Agency of intent to market;
2. Submission to the Agency of copies of the advertisements, project signs, brochures and letters used during the marketing period and developed as part of the marketing program; and
3. Submission of required occupancy reports, monthly sales reports, and monthly rental reports.

#### **5:80-22.17 The Management Plan**

(a) The applicant shall submit a Management Plan setting forth roles, responsibilities, policies and procedures regarding all aspects of management, including but not

limited to parking and tenant selection. The Management Plan shall contain the applicant's plan for implementing the Affirmative Fair Housing Marketing Plan and for equal employment opportunities. The agency will review the Management Plan to determine consistency with the approved Affirmative Fair Housing Marketing Plan. Particular attention will be paid to the following in determining consistency with the Plan:

1. Advertising of units; and

2. Tenant selection and assignment methods. Although the Affirmative Fair Housing Marketing requirements apply to advertising the availability of the housing, the selection procedures adapted by the applicant affect the opportunity of eligible persons to exercise their housing choice. These selection procedures and methods of administration should not directly or indirectly discriminate against any person on the basis of race, color, religion, creed, sex, or national origin or have the effect of hindering the achievement of the purposes of the plan objectives. Applicants are encouraged to adopt the Agency's Tenant/Owner Selection Guidelines as their own.

#### **5:80-22.18 Notification of intent to begin marketing**

The applicant shall notify the agency no later than 90 days prior to the commencement of any sales or rental marketing activities of the applicant's intent to begin sales or rental activities.

#### **5:80-22.19 Preoccupancy conference**

Upon receipt of the notification of intent to begin marketing, the Agency may schedule a preoccupancy conference with the applicant's advertising firm, rental and/or sales agent.

#### **5:80-22.20 Marketing for initial sales or rent-up**

(a) In carrying out the provisions of the approved Affirmative Fair Housing Marketing Plan, the applicant shall implement the following procedures which apply to advance marketing activities as well as marketing activities targeted to the general eligible population:

1. Prior to initiating general marketing, contact the commercial media, fair housing groups, employment centers and civil rights organizations which have been identified as resources for attracting persons who are "least likely to apply" for the housing.
2. Establish a system for documenting outreach activities and for maintaining records of prospective occupants and approved eligible families which provide racial, ethnic and gender data.
3. Prior to the commencement of application taking or sales, provide training to all management or sales staff in Federal, State and local fair housing laws and with respect to the plan objectives.

4. Submit materials to the agency which document activities taken to implement the approved Plan; that is, copies of advertisements, brochures, leaflets, and letters to community organizations, fair housing groups, major employment centers, referral services, and other contacts utilized as part of the marketing program; photographs of project signs; a copy of the instructions used to train sales/rental staff in fair housing laws; anticipated dates of advertising and occupancy.

5. Prior to initiation of marketing, the applicant may compile a list of those persons who indicated an interest in applying for the housing. Such persons shall not be considered prospective occupants and placed in the prospective occupant pool until they have filed a formal application during the regular, publicized application-taking period. Application forms should not be provided to such persons in advance of other persons to whom the marketing program is directed.

#### 5:80-22.21 Assessment of the Plan's implementation

(a) The applicant shall monitor and carefully evaluate the results of the special outreach and general marketing activities undertaken during the initial sales or rent-up period. Through such evaluation, the applicant can determine whether the provisions of the Plan have been successfully implemented and how effectively the Affirmative Marketing Program has helped attract buyers or tenants of majority and minority groups. Examples of factors to be examined in the population of the relevant housing market area include:

1. The actual racial/ethnic composition of either the tenant/owner population or the prospective occupant pool. The applicant should compare this data with the anticipated composition of prospective occupants or tenants/owners the applicant has projected in the Plan. If the anticipated and actual compositions are similar, then the advertising program can be considered successful. If the actual occupant or prospective occupant pool composition does not reflect the projected pattern, the marketing program should be carefully reviewed to determine, for example:

- i. Whether outreach efforts are yielding fewer or more applicants from the target groups;
- ii. Whether the prospective occupant pool composition itself appears to be realistic in light of marketing experience related to the project in question;
- iii. Whether adjustments in the advertising strategy or other outreach efforts are warranted;
- iv. Whether tenant/owners selection criteria appear to be a factor in producing a racial/ethnic composition of occupants which is different from that of the prospective occupant pool.

2. Measures relating directly to special outreach and other advertising techniques used in the marketing program. For example, the applicant may keep a running tabulation of responses to questions relating to the manner in which the prospective buyer or renter had heard about housing. Through such techniques, the applicant can determine whether, for example, foreign language or minority media are effective marketing mechanisms; whether the equal housing opportunity logo effectively conveys to such buyers or renters the message that they are welcome to apply and will not encounter discrimination; whether community contacts used by the applicant are advertising the housing effectively; whether members of groups targeted for special outreach activities are learning about the housing through informal means rather than commercial media.

#### 5:80-22.22 Modification of the approved Affirmative Fair Housing Marketing Plan

(a) Modification to the approved Plan may be appropriate under certain circumstances prior to initial marketing, after commencement of initial marketing, or after rent-up is completed. Circumstances which may generate modifications in the Plan include:

1. Significant changes in the parties implementing the Plan, for example, sales company, management company or applicant. If such changes occur, the applicant should identify the new parties and inform the Agency of such changes.

2. Significant changes in the demographic or economic characteristic of the housing marketing area in which the project is located, for example, racial/ethnic composition. Such changes can affect the direction of the outreach activities, that is, the group or groups within the eligible population which have been identified as least likely to apply. If the demographic or economic characteristics of the area in which the proposed housing is to be located have changed very significantly, the applicant should consider changing the group(s) to be targeted for special outreach activities as well as the specific aspects of the advertising program, for example, commercial media, brochures and signs, which relate to the choice of target groups. Similarly if new information with respect to community contacts which may be helpful in reaching the target groups, for example, establishment of a Community Resources Housing Board or the dissolution of a housing referral service previously listed in the approved plan comes to light then changes might be warranted.

(b) If the applicant concludes that changes would be appropriate, the applicant should, as early in the marketing process as possible, discuss possible changes with the Agency and submit any proposed changes for Agency review and approval.

**5:80-22.23 Record keeping and recording requirements**

(a) The applicant shall collect and maintain information relating to sales and rental activities, including documentation connected with the outreach program, race and gender for both occupants and prospective occupants. The applicant shall maintain this data for the most recent three year period of operation or portion thereof, if the project has not been in operation for more than three years. The applicant shall submit monthly reports on occupancy to the Agency, as follows:

1. The monthly sales report is to be submitted for all single-family subdivisions and multifamily cooperative projects on or before the fifth day of the month following initial sales of any housing units and monthly thereafter until 95 percent of the units are sold. For housing units built in scattered sites, separate sales reports must be submitted for each type of area in which the units are built, that is, minority area, racially-mixed area, or non-minority area.

2. The applicant must submit monthly rental reports for rental housing programs on or before the fifth day of the month following the rental of the first unit. This report is submitted monthly until 95 percent of the units are occupied.

**5:80-22.24 Future marketing activities for rental projects**

(a) Upon completion of the initial rent-up, the applicant initiates appropriate marketing activities for filling vacancies resulting from normal turnover. The applicant may utilize the list of remaining prospective occupants as the waiting list for the project. The applicant is encouraged to contact the Agency for assistance in adapting the Plan to the post-initial occupancy period. The nature of this adaptation would normally depend on such factors as:

1. The size and racial/ethnic composition of the waiting list, if one is maintained;

2. The assessment by the Agency and the applicant of the effectiveness of the initial marketing Plan, especially with respect to participation by members of those groups identified as least likely to apply;

3. Any changes in the demographic and socio-economic composition of the housing market area.

**5:80-22.25 Monitoring**

(a) Monitoring will be conducted to assess the degree to which the activities undertaken pursuant to an approved Affirmative Fair Housing Marketing Plan conform with the applicable Fair Housing Laws and Regulations. In conducting monitoring, the agency will determine:

1. Whether the applicant has made a good-faith effort to carry out the provision of the approved Plan and related Affirmative Fair Housing Marketing requirements; and

2. Whether progress has been made toward the achievement of the objectives of the Plan.

(b) Agency staff will conduct on-site monitoring which will entail an examination of records, visual inspection of the project and interviews with applicants, rental/sales agent and staff, occupants and community organizations identified in the Plan. Records which may be examined include applications (for both accepted and rejected prospective occupants), and documentation relating to advertising.

(c) Failure to make a "good faith effort" to comply with the Plan could result in the loss of Agency financial assistance. All complaints regarding discrimination will be forwarded to the New Jersey Division on Civil Rights for formal criminal investigation.

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**SUBCHAPTER 23. HOUSING INCENTIVE NOTE PURCHASE PROGRAM****5:80-23.1 Authority**

The rules in this subchapter are promulgated under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting P.L. 1983, c.530, N.J.S.A. 55:14K-1 et seq.; specifically N.J.S.A. 55:14K-12a and 14K-5(s).

**5:80-23.2 Purpose**

This subchapter is established to assist the Agency in helping to create incentives for lenders and developers to make available and continue to provide a base of affordable housing stock of owner occupied residential units in the State of New Jersey, as contemplated by N.J.S.A. 55:14K-12a and 14K-5(s).

**5:80-23.3 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Available note purchase commitment" means at the time of entering into any housing incentive note purchase agreement an amount equal to the product of  $x$  times  $y$ , where  $x = 3$  and  $y =$  the amount then on deposit to the credit of the Fund less all amounts then required as determined as of the end of the most recent calendar quarter by the Agency to be paid out of the Fund pursuant to properly made demands for purchase of undivided interests under existing Housing Incentive Note Purchase Agreements and less (but without duplication) the amount of any undivided interest already subject to purchase with respect to any residential project loan as to which there is an existing default for the payment of principal or interest which is over 90 days past

due (whether or not a demand for purchase has been made).

"Eligible project" means any residential project which:

1. Is located entirely within the geographic boundaries of the State of New Jersey; and
2. Otherwise meets the requirements of the Agency which shall include the qualifications of the developer applying for a housing incentive note purchase agreement and the environmental and other characteristics of the real property comprising the residential project.

"Fund" means the Housing Incentive Note Purchase Fund established pursuant to N.J.A.C. 5:80-23.4.

"Housing incentive note purchase agreement" or "HINPA" means any note purchase agreement entered into by the Agency pursuant to this subchapter in which the Agency agrees, subject to the terms and conditions set forth therein, to purchase an undivided interest.

"Person" means any individual, corporation, general or limited partnership, joint venture or other entity.

"Purchase price" means the dollar amount, payable by the Agency to a qualified lender to acquire an undivided interest pursuant to and as adjusted by the terms of the relevant HINPA, as determined on the date of purchase. The purchase price shall be an amount equal to the lesser of:

1. A stated dollar amount; or
2. The product of  $x$  times  $y$ , where  $x$  = the undivided interest and  $y$  = the outstanding principal amount of the relevant loan on the date of purchase.

"Qualified lender" means any person resident in, established under the laws of, or qualified to do business as a foreign corporation or other entity in, the State of New Jersey and which person is in the business of making real estate loans, has the corporate or other power to, and is authorized to conduct such business in, the State of New Jersey, and has a credit status satisfactory to the Agency.

"Residential project" means any development, the purpose of which is to create one or more residential structures for owner occupancy whether in the form of detached units or attached units for separate occupancy together with any land, infrastructure, roads, sewer, structures, facilities or other improvements, appurtenant or ancillary thereto. "Residential project" includes any partially or wholly completed development which would have constituted a "residential project" at inception and which has been abandoned or foreclosed or is subject to a foreclosure, bankruptcy, insolvency or like proceeding.

"Undivided interest" means the Agency's undivided share of any eligible project and the right, title and interest of the qualified lender in, to and under the related loan documents and collateral.

#### 5:80-23.4 Housing Incentive Note Purchase Fund

(a) There is hereby established within the funds maintained by the Agency a fund to be known as the "Housing Incentive Note Purchase Fund."

(b) There shall, on July 19, 1993, be deposited in the Fund the amount of \$10,000,000 from funds available to the Agency and previously designated for this purpose.

(c) There shall also be deposited in the Fund:

1. All income earned on the monies deposited therein;
2. All HINPA fees received pursuant to N.J.A.C. 5:80-23.9(a);
3. All monies received by the Agency in respect of the undivided interests whether denominated as principal, interest or otherwise but excluding the fees received pursuant to N.J.A.C. 5:80-23.9(b) and (c), and
4. All other monies designated from time to time by the agency for deposit in the Fund.

(d) Monies on deposit in the Fund may be invested and reinvested by the Agency in the same manner in which other funds of the Agency may be invested.

(e) Monies on deposit in the Fund may be withdrawn:

1. To fund the payment of the purchase price of undivided interests pursuant to housing incentive note purchase agreements;
2. To cure, at the option of the Agency, payment defaults by developers as, and if, contemplated by the respective housing incentive note purchase agreements; and
3. To liquidate the Fund upon payment in full or the provision of payment in full of all existing and contingent obligations of the Agency under housing incentive note purchase agreements existing at the time of liquidation of the Fund.

#### 5:80-23.5 Authority to enter into housing incentive note purchase agreements

(a) Each housing incentive note purchase agreement entered into pursuant to this subchapter shall be a limited recourse purchase obligation of the Agency payable solely from monies available in the Fund and from no other fund or source of monies and shall not be a general obligation of the Agency. In the event there are insufficient monies in the Fund to pay the aggregate purchase price of all undivided interests under outstanding housing incentive note purchase agreements, such purchases shall be made pro rata based upon the ratio which the purchase price under each HINPA bears to the aggregate purchase price of all undivided interests with respect to which a demand for purchase has been received by the Agency.

(b) The Agency may enter into a housing incentive note purchase agreement for any eligible project pursuant to which the Agency agrees to purchase an undivided interest for a purchase price not exceeding \$2,000,000 provided that the dollar amount of the purchase price to be paid by the Agency pursuant to such housing incentive note purchase agreement with respect to an eligible project, when added to the aggregate purchase price payable by the Agency pursuant to existing housing incentive note purchase agreements (whether or not a demand for purchase has been made), does not exceed the then available note purchase commitment and provided further that the provisions at N.J.A.C. 5:80-23.6(b) are met. In determining whether the foregoing limits for a housing incentive note purchase agreement proposed to be entered into with respect to any eligible project are met, the Agency need not consider as an aggregate, separate eligible projects undertaken by the same person or such person's affiliates as one project, unless they are, in the judgment of the Agency, subdivisions of the same residential project, physically contiguous or located within the same municipality.

(c) In the event that the available note purchase commitment at any time is insufficient to meet the applications for financial support of the Agency in the form of requested housing incentive note purchase agreements, the Agency may prioritize requests for housing incentive note purchase agreements in its sole discretion, taking into consideration the goals of this program, together with the creditworthiness of the respective residential project, the location of existing eligible projects and the location of the proposed residential project, the readiness of the developer to proceed, the experience of the developer, and the marketability of the residential project.

#### 5:80-23.6 Applications

(a) An application for a housing incentive note purchase agreement for a residential project shall be made by the proposed developer in writing to the Agency.

(b) Such application shall set forth the following:

1. The amount of the requested commitment to purchase an undivided interest pursuant to a housing incentive note purchase agreement, the amount of the loan, and the name of the lender;

2. A description of the residential project (including the status thereof, for example, whether fully or partially completed, in foreclosure, ground not yet broken) together with an appraisal, not more than six months old, of the residential project by a New Jersey certified general real estate appraiser, a title report not more than six months old, a site plan, a survey by a licensed surveyor, a copy of applicable zoning ordinances, and the status of utilities, roads and existing financing, if any, relating to the residential project;

3. A description of the developer, including a description of all real estate projects undertaken by the developer for the five years prior to the application, outstanding

judgments against the developer and pending litigation involving the developer, if any, the type of person (for example, whether a corporation, limited or general partnership, or joint venture), list of all existing and proposed owners of equity in the developer and the residential project, and the most recent financial statements of the developer;

4. A description of the proposed financing for the residential project, including the name of the lender, any term sheets or commitment letters which have been provided to the developer and any draft documentation relating thereto;

5. If the lender is not a bank or other financial institution having one of the three highest investment grade ratings issued by Standard and Poor's Corporation or Moody's Investors Service, Inc., the application shall be accompanied by the most recent annual report of such lender;

6. An analysis of the cost to complete the residential project, together with a tabulation of the source and use of funds necessary to meet such costs; and

7. Any other documents or information (such as, but without limitation, environmental audits) the Agency deems necessary or appropriate to determine whether the residential project is an eligible project.

#### 5:80-23.7 Housing incentive note purchase commitment and requirements

(a) The Agency may issue to the developer of a residential project which is determined by the Agency to be an eligible project, a commitment to enter into a housing incentive note purchase agreement, only upon the approval of the members of the Agency after a review of the application delivered by the developer and such other information as the Agency may request from the developer and any qualified lender. Such commitment to enter into a housing incentive note purchase agreement shall contain such conditions precedent and other terms as the Agency shall deem appropriate. The members of the Agency may delegate to any officer of the Agency the authority to execute and deliver a housing incentive note purchase agreement pursuant to a commitment upon a determination by such officer that all conditions precedent and other terms of such commitment have been satisfied.

(b) Each commitment to issue a housing incentive note purchase agreement shall require that:

1. All documents relating to an eligible project shall be in form and substance satisfactory to the Agency;

2. All mortgages of an eligible project securing repayment of the financing thereof shall identify and set release prices for the individual parcels comprising the eligible project and require the mortgagee to release each parcel upon its sale provided the release price has been paid;

3. The developer provide mortgagee's title insurance, casualty and liability insurance and builders risk insurance, all by insurers and in such amounts as the Agency may require;



4. The mortgage in favor of the qualified lender financing the eligible project be the only first lien encumbrance on the eligible project securing indebtedness for borrowed money. Subordinated financing may be permitted with the approval of the Agency provided the subordinated financing, collectively with the first lien financing provided by qualified lenders, meet standard underwriting criteria used in the lending industry; and

5. Loan documents and all security therefor expressly reflect the rights and benefits of the Agency arising from the undivided interest and providing for the recognition of the rights of the Agency as a lender pursuant to its acquisition of the undivided interest.

Amended by R.1994 d.302, effective June 20, 1994.  
See: 26 N.J.R. 9(a), 26 N.J.R. 2571(a).

#### **5:80-23.8 Housing incentive note purchase agreement requirements**

(a) Each housing incentive note purchase agreement entered into by the Agency shall state that it expires at a date not later than the second anniversary of the date of entering into such housing incentive note purchase agreement.

(b) The amount of the undivided interest agreed to be purchased pursuant to each housing incentive note purchase agreement may not exceed 30 percent of the monies being loaned by a qualified lender with respect to such eligible project. The foregoing restriction is in addition to, and not in derogation of, any other limits contained within this subchapter.

(c) Each housing incentive note purchase agreement shall require that the developer pay all costs incurred by the Agency in connection with the preparation, execution and delivery of such housing incentive note purchase agreement, and in connection with any litigation arising out of such housing incentive note purchase agreement or any rights the Agency may have with respect thereto, including, in each case, and without limitation, all reasonable fees and disbursements of counsel to the Agency.

(d) Any request for an extension of the termination date of a housing incentive note purchase agreement shall be treated as an application for a new housing incentive note purchase agreement, and all of the provisions of this subchapter shall apply to such request as if it were an application for a new housing incentive note purchase agreement.

#### **5:80-23.9 Fees**

(a) No application for a housing incentive note purchase agreement shall be accepted unless it is accompanied by a nonrefundable application fee of \$3,500.

(b) No commitment to enter into a housing incentive note purchase agreement shall be issued by the Agency pursuant to N.J.A.C. 5:80-23.5 unless on or before the date of issuance of such commitment there has been paid to the Agency a nonrefundable commitment fee as follows:

1. No commitment fee shall be due for projects of 12 units or less;

2. \$300.00 for every unit over 12 for projects of 13 to 41 units;

3. \$9,000 for projects of 42 units or more.

(c) No housing incentive note purchase agreement shall be entered into by the Agency unless on or before the date of entering into such agreement, there has been paid to the Agency a nonrefundable purchase fee (the "HINPA Fee") in an amount equal to one percent of the principal amount of the respective loan in which an undivided interest is being purchased, but not to exceed \$67,000.

(d) The Agency may establish, from time to time, additional fees as it deems necessary to defray its reasonably estimated costs of administering the program contemplated hereby.

Amended by R.1994 d.302, effective June 20, 1994.  
See: 26 N.J.R. 9(a), 26 N.J.R. 2571(a).

#### **5:80-23.10 No discrimination**

(a) Developers must comply with all applicable Federal, State or local fair housing and civil rights laws and regulations. Federal and State laws provide that developers may not discriminate based upon race, color, creed, religion, sex, national origin, age or handicap.

(b) Developers must also comply with requirements imposed in Agency statutes and rules.

### **SUBCHAPTER 24. LEASE-PURCHASE PROGRAM**

#### **5:80-24.1 Authority**

The rules in this subchapter are issued under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting Chapter 530 of the Laws of 1983, N.J.S.A. 55:14K-1 et seq., including N.J.S.A. 55:14K-5e and 55:14K-5aa.

#### **5:80-24.2 Purpose**

These rules are established to assist the Agency to make available a base of housing stock of residential units in the State of New Jersey as contemplated by N.J.S.A. 55:14K-5e and 55:14K-5aa for families under the lease-purchase arrangement. It is intended that the residential units would become owner occupied after a maximum 36-month rental period during which a portion of the monthly fair market lease payments received by the Agency would be set aside by the Agency to enable it to make a grant towards the downpayment and/or closing costs of an eligible buyer who exercises the purchase option.



**5:80-24.3 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Developer" means any individual, corporation, general or limited partnership, joint venture or other entity.

"Eligible buyer" means one or more natural persons intending upon execution of a lease-purchase agreement to live together (together with any dependents), who execute a lease-purchase agreement, and who intend to exercise the option on the housing unit subject to such lease-purchase agreement and to purchase that unit in the name of the eligible buyer.

1. To be an eligible buyer, the one or more natural persons must together have an annual income:

i. Sufficient to pay the fair market rental required by the lease-purchase agreement and, in the reasonable estimation of the Agency, sufficient to qualify for any financing required to enable such person to exercise the option to purchase from the Agency the unit subject to the proposed lease-purchase agreement (taking into account the proposed grant). Income sufficient to pay the rent shall be determined in accordance with industry standards for market rate rental housing. Income sufficient to qualify for financing shall be determined in accordance with standard underwriting criteria used in the mortgage lending industry; and

ii. Not exceeding 200 percent of the median income, adjusted for family size, in the county where the eligible development is located, as such percentage may be further adjusted by the Agency by amendment of this definition in its reasonable discretion from time to time, and from eligible development to eligible development, to reflect the cost of living and affordable housing prices in the county where the eligible development is located.

2. Notwithstanding 1ii above, admission to eligible developments shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents whose incomes may be up to seven times the annual rental or carrying charge.

"Eligible development" means that portion of any partially or wholly completed development which is offered for sale to the Agency:

1. The purpose of which is to create one or more residential structures for owner occupancy whether in the

form of detached units or attached units for separate occupancy (including, with limitation, condominiums, but excluding cooperative apartments) together with any land, utilities, sewers, structures, facilities or other improvements, appurtenant or ancillary thereto; and

2. Which is located entirely within the geographic boundaries of the State of New Jersey.

"Grant" means the amount designated in the lease-purchase agreement with respect to a unit which the Agency agrees to contribute at the closing on that unit to an eligible buyer who exercises an option to buy that unit, to enable that eligible buyer to meet downpayment and/or closing costs, subject to such recapture provisions on the occurrence of a resale of that unit as set forth in the lease-purchase agreement.

"Lease-purchase agreement" means a contract between the Agency, as lessor/seller, and an eligible buyer, as lessee/option holder, pursuant to which the eligible buyer agrees to rent a unit within an eligible development with an option to buy.

"Purchase agreement" means any purchase agreement entered into by the Agency pursuant to these rules in which the Agency agrees, subject to the terms and conditions set forth in such agreement, to purchase some or all of the housing units, land and other appurtenances related thereto constituting an eligible development.

"Purchase price" means the dollar amount, payable by the Agency to acquire an eligible development pursuant to and as adjusted by the terms of the relevant purchase agreement, as determined on the date of purchase.

"Sales price" means that fair market price set forth in the purchase option that the eligible buyer will pay upon exercise of that option to purchase a housing unit within an eligible development.

**5:80-24.4 Authority to enter into purchase agreements**

(a) The Agency may enter into a purchase agreement for any eligible development, provided that the maximum purchase price for a unit within the eligible development may not exceed the higher of 250 percent of the annual maximum income of an eligible buyer of that unit or the median sales price of existing single-family homes in the area where the eligible development is located. The median sales price shall be determined from the State of New Jersey, Department of Treasury figures for the then most recent fiscal year.

(b) The Agency may prioritize requests for purchase agreements, taking into consideration the goals of this program, market conditions for the Agency's securities, together with the feasibility of the respective eligible development, the location of existing eligible developments and the location of the proposed eligible development, the readiness of the developer to proceed, the experience of the developer, and the marketability of the units in the eligible development.

**5:80-24.5 Purchase agreement requirements**

(a) Each purchase agreement shall contain the following conditions precedent to the Agency's obligation to purchase an eligible development:

1. At least 50 percent of all housing units in the partially or wholly completed development of which the eligible development is a portion, shall have been previously sold to buyers not participating in this lease-purchase program. This requirement shall not apply to eligible developments of 25 or fewer units;

2. At least 50 percent of all housing units comprising the eligible development shall be complete and in move-in condition, with certificates of occupancy issued and in effect for them, and with signed lease-purchase agreements with eligible buyers. The remaining housing units of the eligible development to be purchased by the Agency must be completed, with certificates of occupancy in effect, and with signed lease-purchase agreements with eligible buyers, within one year of the signing of the purchase agreement. The Agency must be the first user of each unit except that the Agency may agree to purchase a substantially rehabilitated unit. A unit shall be treated as substantially rehabilitated when rehabilitation expenditures equal or exceed 25 percent of the purchase price of the unit to the Agency;

3. A builder's warranty must be provided in a form and substance equivalent to the new homeowner's warranty required by N.J.S.A. 46:3B-1 et seq.; and

4. The Agency must have, prior to or simultaneously with such purchase, received proceeds from the sale of the Agency's securities in an amount equal to as much as 110 percent of the purchase price (the purpose of such excess being to provide a cash reserve of up to 10 percent for the payment of such securities, if required in order to market such securities and if such reserve is not established from other funds, allocated or credited to the lease-purchase program).

(b) Each purchase agreement shall contain the following requirements:

1. All documents relating to an eligible development shall be in form and substance satisfactory to the Agency;

2. The developer shall provide title insurance, casualty and liability insurance and builder's risk insurance, all by insurers and in such amounts sufficient to protect against the risk of loss associated with the development, purchase and financing of the eligible developments;

3. Real estate taxes, assessments or like payments relating to the eligible development accruing for the period ending on the last day of the calendar year during which the transactions contemplated by the purchase agreement are consummated shall be paid by the seller of the eligible development; and

4. At closing, the eligible development shall be subject to no encumbrances other than encumbrances acceptable to the Agency.

**5:80-24.6 Application**

(a) An application for a purchase agreement for an eligible development shall be made by the proposed developer in writing to the Agency, and shall contain the following information:

1. The amount of the requested purchase price, in total and by unit;

2. A description of the eligible development together with a recent appraisal of the eligible development by a New Jersey certified general real estate appraiser, a recent title report, a site plan, a survey by a licensed surveyor, the applicable zoning ordinances, a report on the status of utilities, roads, and the existing financing, if any, relating to the eligible development;

3. A description of the developer (for example, whether a corporation, limited or general partnership, joint venture or otherwise), including a list of all existing and proposed owners of equity in the developer; and

4. At the Agency's discretion, an environmental audit, which will be required if any of the information received in connection with the application indicates that there may be environmental concerns associated with the proposed eligible development.

(b) Prior to the signing of each lease-purchase agreement with an eligible buyer, the developer shall obtain the Agency's approval of that eligible buyer. To enable the Agency to determine whether to approve a proposed eligible buyer, the developer shall submit to the Agency the following information:

1. The name, annual income, and employment history of the proposed eligible buyer, together with the Federal and state income tax returns most recently filed by the individual or individuals constituting the eligible buyer; and

2. Such other information as shall be required by the Agency from time to time pertaining to a specific proposed eligible buyer.

**5:80-24.7 Authority to enter into lease-purchase agreements**

(a) The Agency may enter into a lease-purchase agreement with an eligible buyer, provided that such lease-purchase agreement contains as a condition precedent to the Agency's obligations thereunder that lease-purchase agreements for at least 50 percent of the housing units in the subject eligible development be or have been fully executed and delivered by all parties thereto prior to, or simultaneously with, the Agency's consummation of the transactions contemplated by the related purchase agreement.

(b) Each lease-purchase agreement with an eligible buyer shall contain the following terms and conditions, in addition to such other terms and conditions that the Agency may from time to time deem appropriate for a particular agreement:

1. The eligible buyer shall agree to rent at a fair market rental a housing unit in an eligible development for a fixed period as determined by the Agency, not to exceed 36 calendar months, and to pay the monthly rental promptly and fully. Failure to make such rental payments promptly and fully, or physical abuse of the unit, shall result in prompt eviction and the termination of the option described in (b)3 below;

2. The eligible buyer shall agree that such housing unit be used solely as a principal residence, and shall further agree that the unit shall not be used for seasonal use, as an investment property, or for business purposes;

3. The eligible buyer shall pay upon the execution of the lease-purchase agreement, a nonrefundable option fee of \$1,000 for an option to purchase for cash the housing unit which is the subject of the lease-purchase agreement, on the expiration date of the lease period set forth therein. If the eligible buyer does not exercise the option, the lease will terminate at the expiration of the lease period, the eligible buyer will immediately vacate the unit, and the Agency will retain the option fee;

4. In return for the option fee, the Agency shall grant the eligible buyer an option to purchase the subject housing unit at a fixed price; each price being the unit's estimated fair market value at the end of the lease period, such estimate being set pursuant to an appraisal prior to the execution of the lease-purchase agreement;

5. The Agency shall accumulate in a segregated fund a percentage (calculated at the time of execution of the lease-purchase agreement) of the fair market monthly rent it will receive during the lease period set forth in the lease-purchase agreement at a rate calculated by the Agency to be sufficient, together with the option fee, and its projected profit on the sale of the unit, if the option is exercised, to enable it to make the grant. The grant will be applied towards closing costs and the downpayment on the sales price for such housing unit for which the eligible buyer has otherwise obtained or is expected to obtain his or her own financing. The amount of the grant to be made will be calculated by the Agency (at the time the lease-purchase agreement is executed) as the amount, given anticipated market conditions, to be necessary, taking into account the assets of the eligible buyer, to induce a mortgage lender to finance the balance of the sales price for the housing unit. Such calculation by the Agency shall not constitute a representation or warranty to the eligible buyer of the availability of mortgage financing and the eligible buyer shall have no recourse against the Agency in the event such eligible buyer fails to obtain mortgage financing or is otherwise unable to exercise the option to purchase the housing unit which is subject to

the lease-purchase agreement. If, for any reason, the eligible buyer is unable to or chooses not to exercise the option to purchase, all monies so set aside shall be retained by the Agency.

i. Notwithstanding anything to the contrary contained in these rules, the percentage rent to be set aside by the Agency to fund a portion of the grant shall not reduce the unrestricted portion of the rent to an amount less than the amount sufficient to maintain and operate the rental housing and to meet debt service on the portion of the securities issued by the Agency to finance the purchase of such housing, and all monies set aside with respect to such downpayment and/or closing costs shall be subject to application to pay required debt service on such securities; and

6. The eligible buyer shall acknowledge that the Agency may give a mortgage and/or other security interests in the housing unit to secure repayment of the financing undertaken by the Agency to finance the purchase price for the eligible development.

## SUBCHAPTER 25. (RESERVED)

## SUBCHAPTER 26. HOUSING AFFORDABILITY CONTROLS

### Authority

N.J.S.A. 52:27D-321f, 52:27D-324 and 55:14K-5g.

### Source and Effective Date

R.2001 d.360, effective October 1, 2001.  
See: 33 N.J.R. 230(a), 33 N.J.R. 3432(b).

### Subchapter Historical Note

Subchapter 26, Housing Affordability Controls, was repealed and a new Subchapter 26, Housing Affordability Controls, was adopted as new rules by R.2001 d.360, effective October 1, 2001. See: Source and Effective Date.

### 5:80-26.1 Purpose and applicability

(a) This subchapter is designed to implement the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) by assuring that low-and moderate-income units created under the Act are occupied by low-and moderate-income households for an appropriate period of time. This subchapter provides rules for the establishment and administration of affordability controls on restricted units that receive COAH credit under the Fair Housing Act; that receive funding from the Division under the Neighborhood Preservation Balanced Housing Program; or with respect to which a municipality or developer contracts with the Agency or HAS

for the administration of affordability controls pursuant to the Fair Housing Act; provided, however, that the rules do not apply to units qualifying for the Federal Low-Income Housing Tax Credit under Section 42 of the Internal Revenue Code or to units receiving assistance under the Federal HOME program, 24 C.F.R. § 92.252(e), § 92.254(a)(4); HUD 202 program, 24 C.F.R. Part 891; HUD 811 program, 24 C.F.R. Part 890; HUD HOPE VI program; or Federal Home Loan Bank, Affordable Housing Program, 12 C.F.R. Part 60.

(b) This subchapter shall be effective on October 1, 2001 with respect to all restricted units described in (a) above, subject to the following exceptions:

1. Any unit subject to a grant agreement or other contract with either the State or a political subdivision thereof, in effect on or before January 1, 2001, and which provides for a control period different from that otherwise applicable under either N.J.A.C. 5:80-26.5 or 26.11 shall have its control period governed by said grant agreement or contract; and

2. Condominium units subject to an adopted municipal ordinance which provides for condominium fees and/or assessments different from those provided for in N.J.A.C. 5:80-26.6(d), shall have such fees and assessments governed by said ordinance.

#### 5:80-26.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Administrative agent” means the entity responsible for administering the affordability controls of this subchapter with respect to specific restricted units, as designated pursuant to N.J.A.C. 5:80-26.14.

“Affordable” means, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c.530 (N.J.S.A. 55:14K-1 et seq.) and in, but not of, the Department of Community Affairs.

“Balanced Housing” means the Neighborhood Preservation Balanced Housing Program of the Department of Community Affairs as set forth at N.J.A.C. 5:43.

“Certified household” means a household that has been certified by an administrative agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing in, but not of, the Department of Community Affairs, established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

“Division” means the Division of Housing and Community Resources in the Department of Community Affairs.

“HAS” means the Housing Affordability Service, formerly known as the “Affordable Housing Management Service,” in the Department of Community Affairs, Division of Housing and Community Resources.

“HUD” means the United States Department of Housing and Urban Development.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Median income” means the median income by household size for an applicable county, as adopted annually by COAH.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Range of affordability” means an average of the percentage of median income at which restricted units in an affordable development are affordable to low-and moderate-income households. For example, if the rents for the five restricted rental units in an affordable development were affordable at 48, 50, 52, 54 and 56 percent of median income, respectively, the range of affordability for those units would be 52 percent of median income.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of this subchapter.

**5:80-26.3 Range of affordability**

(a) The restricted units in each affordable development that receives COAH credit under the Fair Housing Act shall be subject to the range-of-affordability requirements set forth in the COAH rules at N.J.A.C. 5:93-7.4. The restricted units in each affordable development that receive Balanced Housing assistance but do not receive COAH credit shall be subject to the range-of-affordability requirements of the Balanced Housing program set forth in N.J.A.C. 5:43. Restricted units that receive neither COAH credit nor Balanced Housing assistance are subject to the range-of-affordability requirements of this section.

(b) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units.

(c) The maximum rent of restricted units within each affordable development shall be affordable to households earning no more than 60 percent of median income. Each affordable development must achieve a range of affordability of 52 percent for restricted rental units. In achieving this range of affordability, developers and/or municipal sponsors of rental units may establish one rent for a low-income unit and one rent for a moderate-income unit for each bedroom distribution.

(d) The maximum sales price of restricted units within each affordable development shall be affordable to households earning no more than 70 percent of median income. Each affordable development must achieve a range of affordability of 55 percent for restricted ownership units. In achieving this range of affordability, moderate-income ownership units must be available for at least three different prices, and low-income ownership units must be available for at least two different prices.

**5:80-26.4 Occupancy standards**

(a) In determining the initial rents and initial sales prices for compliance with the range of affordability requirements for restricted units, the following standards shall be used:

1. A studio shall be affordable to a one person household;
2. A one bedroom unit shall be affordable to a one and one-half person household;
3. A two bedroom unit shall be affordable to a three person household;
4. A three bedroom unit shall be affordable to a four and one-half person household; and

5. A four bedroom unit shall be affordable to a six person household.

(b) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to:

1. Provide an occupant for each unit bedroom;
2. Provide children of different sex with separate bedrooms; and
3. Prevent more than two persons from occupying a single bedroom.

**5:80-26.5 Control periods for ownership units**

(a) Restricted ownership units shall remain subject to the affordability requirements of this subchapter for a period of at least 30 years; provided, however, that units located in a municipality that receives State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) shall remain subject to these affordability requirements for a period of at least 10 years.

(b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit and shall terminate upon the 10th or 30th anniversary of such transfer, whichever anniversary is applicable under (a) above. Upon the termination of the affordability control period, the affordability controls set forth in this subchapter shall no longer be applicable to the unit.

(c) To ensure that the affordability controls of this subchapter remain in effect for the applicable control period, all conveyances of restricted ownership units shall use deed restriction language substantially in the form set forth in Appendix A to this subchapter, incorporated herein by reference. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be filed by the developer or seller with the records office of the county in which the unit is located, and the original recorded instrument shall be provided promptly to the administrative agent. The preparer of the foregoing instrument shall certify to the administrative agent that the deed restriction language in Appendix A has been included therein.

(d) The affordability controls set forth in this subchapter and incorporated in instruments in the form presented in Appendix A shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

(e) As soon after the expiration of the control period for a restricted unit as is reasonably practicable, the administrative agent shall execute a release, substantially in form set forth in Appendix C to this subchapter, incorporated herein by reference, of all restriction instruments with respect to the unit. The owner of the restricted unit is responsible for

recording the release instruments and returning the recorded originals promptly to the administrative agent.

#### **5:80-26.6 Price restrictions for ownership units**

(a) The initial purchase price for a restricted ownership unit shall be approved by the administrative agent and, if the unit is receiving assistance under the Balanced Housing Program, shall be consistent with the Balanced Housing grant agreement.

(b) The initial purchase price shall be calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and a market rate of interest), taxes, homeowner and private mortgage insurance and condominium fees do not exceed 28 percent of the eligible monthly income of an appropriate household size as determined under N.J.A.C. 5:80-26.4; provided, however, that the price shall be subject to the range of affordability requirement of N.J.A.C. 5:80-26.3.

(c) The maximum resale price for a restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price. If the resale occurs on or after such anniversary date, the maximum resale price may increase annually based on the next published COAH-adopted increase for that year. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

(d) The master deeds of affordable developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.

#### **5:80-26.7 Buyer income eligibility for ownership units**

(a) Low-income ownership units may be purchased and occupied only by low-income households; provided, however, that the administrative agent may permit moderate-income purchasers to buy low-income units in housing markets where, as determined by COAH or the Division, as applicable, low-income prices are required but there is an insufficient number of low-income purchasers to permit prompt occupancy of the units. Moderate-income ownership units may be purchased and occupied only by low- or moderate-income households. A certified household that purchases a restricted ownership unit must occupy it as the principal residence and not lease the unit; provided, however, the administrative agent may permit the owner of a restricted ownership unit, upon a showing of hardship, to lease the unit to a certified household for a period not to exceed one year.

(b) The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or association fees as applicable) does not exceed 33 percent of the household's eligible monthly income. The administrative agent, however, shall certify a low- or moderate-income household as eligible despite the fact that the unit's monthly housing cost would exceed the 33 percent level, if the household obtains a firm mortgage loan commitment at the higher level from a financial institution.

#### **5:80-26.8 Limitations on indebtedness secured by ownership unit; subordination**

(a) Prior to incurring any indebtedness to be secured by an ownership unit, the owner shall submit to the administrative agent a notice of intent to incur such indebtedness, in such form and with such documentary support as determined by the administrative agent, and the owner shall not incur any such indebtedness unless and until the administrative agent has determined in writing that the proposed indebtedness complies with the provisions of this section.

(b) With the exception of original purchase money mortgages, during a control period, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by an ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(c).

#### **5:80-26.9 Capital improvements to ownership units**

(a) The owners of ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits for affordability for the larger household.

(b) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the prorated price has been approved by the administrative agent. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

#### **5:80-26.10 Sale of ownership units upon expiration of control period**

(a) Upon the expiration of the control period for a restricted ownership unit established in N.J.A.C. 5:80-26.5, the owner of the unit shall be entitled to sell it to any purchaser at the fair market price.

#### **5:80-26.11 Control periods for rental units**

(a) Restricted rental units shall remain subject to the affordability requirements of this subchapter for a period of at least 30 years; provided, however, that such units shall remain subject to these affordability requirements for a period of at least 10 years in any of the following circumstances:

1. The units are located in a municipality that receives State aid pursuant to P.L. 1978 (N.J.S.A. 52:27D-178 et seq.);
2. The units are included in a Neighborhood Rehabilitation Project pursuant to N.J.A.C. 5:43-4.4(b); or
3. The units are alternative living arrangements, as defined by COAH; provided, however, that to be eligible for a rental bonus pursuant to N.J.A.C. 5:93-15.5(d), the controls must extend for at least 30 years.

(b) Affordability controls on restricted rental units may exceed the prescribed periods if the unit owner agrees to a longer period.

(c) The affordability control period for the restricted rental units in a development shall commence on the first date that a certified household occupies a unit and shall terminate upon the 10th or 30th anniversary of such initial occupancy, whichever anniversary is applicable under (a) above. Upon the termination of the affordability control period, the affordability controls set forth in this subchapter shall no longer be applicable to the unit.

(d) To ensure that the affordability controls of this subchapter remain in effect for the applicable control period, the deeds of all real property that includes restricted rental units shall contain deed restriction language substantially in the form set forth in Appendix B to this subchapter, incorporated herein by reference. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be filed by the developer or seller with the records office of the county in which the unit is located, and the original recorded instrument shall be provided promptly to the administrative agent. The preparer of the foregoing instrument shall certify to the administrative agent that the deed restriction language in Appendix B has been included therein.

(e) A restricted rental unit shall remain subject to the affordability controls of this subchapter despite the occurrence of any of the following events:

1. A sublease or assignment of the lease of the unit;
2. A sale or other voluntary transfer of the ownership of the unit; or
3. The entry and enforcement of any judgment of foreclosure.

(f) As soon after the expiration of the control period for a restricted unit as is reasonably practicable, the administrative agent shall execute a release, substantially in form set forth in subchapter Appendix B, of all restriction instruments with respect to the unit. The owner of the restricted unit is responsible for recording the release instruments and returning the recorded originals promptly to the administrative agent.

#### **5:80-26.12 Restrictions on rents**

(a) The initial rent for a restricted rental unit shall be approved by the administrative agent and, if the unit is receiving assistance under the Balanced Housing Program, shall be consistent with the Balanced Housing grant agreement. The initial rent shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4; provided, however, that the rent shall be subject to the range of affordability requirement of N.J.A.C. 5:80-26.3.

(b) At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, the rent may be increased, if such increase is consistent with the next published COAH-adopted increase for that year and has been filed with the administrative agent. If the landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit, the landlord may, with the approval of the administrative agent, use the maximum allowable rent instead of the current rent in performing this multipli-



cation to establish the rent for the next tenant under a new lease.

(c) Approved initial rents may not be increased when an announcement of a COAH-adopted increase occurs during initial lease-up activity. Rents may not be increased more than once a year. Rents may not be increased by more than one COAH-approved increment at one time. Rents may not be increased at the time of a new occupancy if the new occupancy occurs within a year of the last occupancy and prior to the next published COAH-adopted increase. No additional fees or charges may be added to the approved rent without the express written approval of the administrative agent. Application fees (including the charge for any credit check) may not exceed five percent of the monthly rental of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls in this subchapter as applicable to the unit.

(d) A written lease is required for all restricted rental units. Final lease agreements are the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions shall comply with applicable law. The landlord shall provide the administrative agent with sufficient information for a preparation of a unit inventory form for entry into the centralized affordable housing unit inventory system. The landlord shall submit a copy of each lease entered into with a certified household to the administrative agent within 10 business days after the execution of each lease.

(e) Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease. The allowance for utilities shall be consistent with the utility allowance approved by HUD for use in New Jersey.

#### 5:80-26.13 Tenant income eligibility

(a) Low-income rental units may be occupied only by low-income households. Moderate-income rental units may be occupied only by low-or moderate-income households.

(b) The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.13; provided, however, that this limit shall be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent and the proposed rent will reduce its housing costs;

2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

3. The household is currently in substandard or overcrowded living conditions;

4. The household documents the existence of assets, with which the household proposes to supplement the rent payments; or

5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the administrative agent and the owner of the unit.

(c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b) above with the administrative agent, who shall counsel the household on budgeting.

#### 5:80-26.14 Administrative agent

(a) The affordability controls set forth in this subchapter, as applicable to any specific restricted units, shall be administered and enforced by the administrative agent. The primary responsibility of the administrative agent shall be to ensure that the restricted units under administration are sold or rented, as applicable, only to low-and moderate-income households. Among the responsibilities of the administrative agent are the following:

1. Conducting an outreach process to insure affirmative marketing of affordable housing units;

2. Soliciting, scheduling, conducting and following up on interviews with interested households;

3. Conducting interviews at locations within the municipality and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low-or moderate-income unit;

4. Obtaining applicant authorization for, and performing, credit checks through one of the major credit information services;

5. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

6. Creating and maintaining a referral list of eligible applicant households living in the COAH region and eligible applicant households with members working in the COAH region where the units are located;

7. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

8. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;



9. Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental;

10. Instituting and maintaining an effective means of communicating information to low-and moderate-income households regarding the availability of restricted units for resale or rental;

11. Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;

12. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the pro-rated cost of central air conditioning systems;

13. Processing requests and making determinations on requests by owners of restricted units for hardship waivers;

14. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's register of deeds or county clerk's office after the termination of the affordability controls in this subchapter for each restricted unit;

15. Providing annual reports to COAH as required; and

16. Such other responsibilities as may be necessary to carry out the provisions of this subchapter.

(b) A municipality itself (through a designated municipal employee, department, board, agency or committee) may serve as the administrative agent for some or all restricted units in the municipality, or the municipality may select HAS or an experienced private entity to serve as administrative agent for some or all restricted units in the municipality. When a municipality selects an experienced private entity to serve as administrative agent for specific restricted units, the administrative agent must be approved by the Division, if the restricted units are to receive funding under the Neighborhood Preservation Balanced Housing Program, or by COAH, if the restricted units are not to receive funding under the Neighborhood Preservation Balanced Housing Program but are to receive COAH credit. The foregoing approval by COAH or the Division is to be based on the private entity's demonstration of the ability to provide a continuing administrative responsibility for the length of the control period for the restricted units.

(c) It is recommended that in approving a private entity as administrative agent, a municipality may obtain and review the following:

1. Documentation which demonstrates that the private entity's purposes include the provision of housing services and housing counseling and the promotion of the principles underlying the Federal Fair Housing laws and that the private entity has knowledge of and familiarity with the New Jersey Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.) and its implementing rules;

2. Evidence of a history of successful management of restricted affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a *Mount Laurel* court settlement;

3. Representations and warranties from the experienced private entity that, if the entity serves as administrative agent with respect to restricted units in which it has a pecuniary interest, the entity shall not allow the pecuniary interest to compromise in any way its administration of the controls set forth in this subchapter;

4. A statement, signed by the experienced private entity, the municipality in which the restricted units to be monitored are located and the developer of the restricted units, of intent to administer long-term affordability controls and to comply with all monitoring requirements as contained in this subchapter;

5. Documentation of the private entity's capacity to undertake the duties of an administrative agent;

6. A statement of intent to attend continuing education opportunities on affordability controls and compliance monitoring when available; and

7. Such other relevant documents from a specific applicant as required by the municipality to justify approval as an administrative agent.

(d) The administrative agent shall have the authority to discharge and release any or all instruments filed of record to establish the affordability controls of this subchapter.

#### 5:80-26.15 Household certification and referral

(a) To ensure that restricted units are occupied by households with the required income levels, the administrative agent shall certify applicant households as low-income households or moderate-income households after verifying household income.

1. For the purposes of this subchapter, income includes, but is not limited to, wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, TANF, verified regular child support, disability, net income from business or real estate, and income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds and imputed income from non-income producing assets, such as equity in real estate.

2. Except as otherwise specifically provided in this subchapter, the sources of income considered by the administrative agent shall be the types of regular income

reported to the Internal Revenue Service and which can be used for mortgage loan approval. Household annual gross income shall be calculated by projecting current gross income over a 12-month period.

3. Assets not earning a verifiable income shall have an annual imputed interest income using a current average annual savings interest rate. Assets not earning income include present real estate equity. Applicants owning real estate must produce documentation of a market value appraisal and outstanding mortgage debt. The difference shall be treated as the monetary value of the asset and the imputed interest added to income.

4. Income from assets that have delayed earnings, such as IRAs or annuity programs, shall not be included in current income until such payments are being received. However, these assets must be reported and verified.

5. Net rent from real estate is considered income, after deduction of any mortgage payments, real estate taxes and property owner's insurance. Other expenses are not deductible. In addition, equity in rented real estate is considered an asset and will have imputed interest income on the calculated equity added to income.

6. Income does not include payments, rebates or credits received under Federal or State low-income energy assistance programs, food stamps, payments received for foster care, relocation assistance benefits, income of live-in attendants, scholarships, student loans, personal property such as automobiles, lump-sum additions to family assets such as inheritances, one-time lottery winnings, and insurance settlements, except for additional income earned from these additions, and casual, sporadic or irregular gifts and bonuses.

(b) The administrative agent shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify the member's income, including income received by adults on behalf of minor children for their benefit. Household members 18 years of age or older who do not receive income must produce documentation of current status.

(c) Income verification documentation may include, but is not limited to, the following:

1. Four consecutive pay stubs, not more than 120 days old, including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure;
2. Copies of Federal and State income tax returns for each of the preceding three years;
3. A letter or appropriate reporting form verifying benefits such as Social Security, unemployment, welfare, disability or pension income (monthly or annually);
4. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support;

5. Income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds;

6. Evidence or reports of income from assets such as real estate or businesses that are directly held by any household member;

7. Evidence or reports that verify assets that do not earn regular income, such as non-income producing real estate or savings that do not earn interest; and

8. A notarized statement of explanation in a form satisfactory to the administrative agent.

(d) Court ordered payments for alimony or child support to another household shall be considered a regular monthly debt, whether or not it is being paid regularly.

(e) When certifying a household's income, the administrative agent may use standard credit information services that provide conventional credit and tenant reports, if the administrative agent provides the household with a written disclosure of any and all adverse consequences from requesting a credit report and, after reviewing the disclosure, the household consents in writing. Credit report examination includes review of:

1. Extent of past due obligations;
2. Judgments, including discharges in bankruptcy;
3. Chargeoffs;
4. Child support arrearages;
5. Tax liens;
6. Unemployment liens for overpayment;
7. Repossessions;
8. New Jersey Division of Motor Vehicles arrearages;
9. Foreclosures;
10. Rent arrearages;
11. Collection accounts;
12. Student loan delinquencies;
13. Existence of real estate owned;
14. Debt resulting from cosigning others' loans;
15. Two-year pattern of debt payment; and
16. Such other appropriate information on a standard credit report which may assist the administrative agent in evaluating applicant status.

(f) At the discretion of the administrative agent, households may also be required to produce documentation of household composition for determining the correct unit size and applicable median income guide.

(g) The administrative agent shall prepare a standard form of certification and shall sign and date one for each certified household. Only certified households shall be referred to restricted units. Certification shall be valid for no more than 180 days unless a valid sales contract or lease has been executed within that time period. In this event, certifications shall be valid until such time as the sales contract or lease is ruled invalid and no occupancy has occurred. Certifications may be renewed in writing at the request of a certified household for an additional period of 180 days at the discretion of the administrative agent.

(h) When a certificate of eligibility is withheld based on information contained in a credit report, the administrative agent shall in all cases provide the applicant with the opportunity to correct or explain negative information causing such a result. A firm mortgage approval from a lender after such withholding of eligibility certification shall require that a certification be issued.

(i) A certificate of eligibility may be withheld by the administrative agent as a result of an applicant's inability to demonstrate sufficient present assets for down payment or security deposit purposes, subject to development phasing that may provide opportunity for future savings.

(j) A certificate of eligibility may be withheld by the administrative agent as a result of an applicant's inability to verify funds claimed as assets, household composition or other facts represented.

(k) A certificate of eligibility shall be denied by the administrative agent as a result of any willful and material misstatement of fact made by the applicant in seeking eligibility.

(l) The administrative agent shall screen households that apply for low-and moderate-income housing for preliminary income eligibility, by comparing their total gross annual income to the low-and moderate-income limits adopted for that year by COAH. The administrative agent shall notify applicants as to their eligibility status and shall enter their names onto a referral list.

(m) The administrative agent shall establish and maintain a prescreened list of applicants for available new and re-occupancy housing units.

1. The administrative agent shall select applicants at random from:

- i. Any list established for that housing region and developed in response to prior developments; and
- ii. Any list developed by the municipality, the developer or any other source.

2. The administrative agent shall analyze the income and household sizes of applicants to determine which applicants have requirements which match the characteristics of available housing units.

(n) The administrative agent shall interview each selected applicant who responds to a notice of opportunity to interview, and shall utilize the procedures outlined in this subchapter in order to verify the applicant's income and household size, determine the applicant's asset availability and review the applicant's credit history. Applicants shall be required to submit income verification for all household members. This process shall be utilized to establish the final certified applicant group. Information indicating certification of applicants shall be forwarded to the landlord or developer.

(o) With regard to low-and moderate-income units, developers shall be required to provide the following information to the administrative agent:

1. Verification of the exact number of affordable units and the low-income/moderate-income breakdown;
2. Identification of price/rent levels;
3. Realistic identification of timing and phasing of construction and resulting availability of units;
4. Proposed allocation of marketing responsibility between developer and administrative agent;
5. Identification of any options or extras included in sale or rent prices;
6. Identification of availability and placement of storage, parking, included appliances, air conditioning and amenities with regard to affordable units;
7. Identification of adaptable or accessible units;
8. Unit configurations and square footages with breakdowns as to the number of units containing specific numbers of bedrooms with floor plans;
9. Number of bathrooms per unit;
10. The location of low-income, moderate-income and market units in an affordable development;
11. Information as to the attorney or title company performing closings, or the property manager responsible for leasing;
12. Amount of condominium fees or fees charged for services not included in basic maintenance or rent;
13. Estimated taxes for sale units;
14. Sewer/trash disposal assessment, if applicable;
15. Flood insurance requirement, if applicable;
16. Type of heating and HVAC fuel arrangement;
17. Location of common areas and elevators, if applicable; and
18. Any other information relevant to future occupants.

(p) In referring certified households to specific restricted units, the administrative agent shall endeavor, as nearly as practicable, to match the household's income to the price or rent for the unit. For example, if the purchase price or rent for a moderate-income unit is calculated to be affordable at 55 percent of median income, the administrative agent shall refer a certified household earning 60 percent of median income to the unit before referring a certified household earning 70 percent of median income.

#### 5:80-26.16 Procedures for changing administrative agents

(a) In order to ensure an orderly transfer of control responsibility from a municipality to an administrative agent, from one administrative agent to another administrative agent, or other transfer, the following steps to be taken are provided for guidance in the transition:

1. A letter advising of the change should be sent to all low-and moderate-income homeowners in the case of ownership units, and all landlords or their agents in the case of rental developments;

2. In the case of ownership units, legal assignments to the name of the new administrative agent of all restriction instruments should be prepared and recorded;

3. Hard copy files on each unit, to contain at a minimum the original deed restriction, repayment mortgage and mortgage note (if applicable), the application materials, verifications and certifications of all present owners, pertinent correspondence, any documentation of home improvement, hardship waiver or other approvals granted by the former administrative agent and other miscellaneous correspondence, should be physically transferred to the custody of the incoming or new administrative agent; and

4. The new administrative agent shall be provided with:

- i. A written methodology applied in the past and to be applied in the future for a calculation of maximum resale prices and rents;

- ii. The base sales price or initial base rent for each unit;

- iii. Identification for each unit as to whether categorized as low-income or moderate-income;

- iv. A description of the number of bedrooms and physical layout of each unit;

- v. Floor plans; and

- vi. In the case of condominiums, a copy of the master deed and public offering statement.

Amended by R.1988 d.331, effective July 18, 1988.

See: 20 N.J.R. 862(a), 20 N.J.R. 1688(b).

(c) added.

#### 5:80-26.17 Enforcement

The Agency, COAH and the Division hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter.

#### 5:80-26.18 Appeals

Appeals from all decisions of an administrative agent appointed pursuant to this subchapter shall be filed in writing with the Executive Director of the Agency. When acting in this capacity, the Executive Director may appoint one or more employees of the Agency, COAH and/or the Department of Community Affairs to assist him or her in rendering the final decision, whenever he or she, in his or her sole discretion, determines that committee participation would materially promote a fair and just disposition of the appeal. The Executive Director's review of an appeal need not comply with the requirements for the conduct of a contested case under the New Jersey Administrative Procedure Act. A written decision of the Executive Director upholding, modifying or reversing an administrative agent's decision shall be a final administrative action, subject to judicial review.

### APPENDIX A

#### AFFORDABILITY DEED RESTRICTION FOR OWNERSHIP UNITS

In this Deed Restriction, the real estate described in this deed, including the land and all buildings and improvements, is called the "Property." The person (or persons) transferring ownership of the Property is called the "Grantor," and the person (or persons) receiving ownership of the Property is called the "Grantee."

This Deed Restriction consists of two promises made by the Grantor and the Grantee:

1. The Property will be used as an owner-occupied dwelling for a low-income household or a moderate-income household [*if applicable, add: as well as an associated rental dwelling*].

2. The Property will be governed by the regulations known as the Uniform Housing Affordability Controls that appear in the New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1 et seq.), as those regulations may be revised from time to time.

This Deed Restriction shall remain in effect until [*supply the date that is 30 years (or 10 years, if applicable) from the date on which the first certified household took title to the Property*]. On that day, and afterward, this Deed Restriction will have no validity; until that day, it will remain in effect despite any judgment of foreclosure rendered in connection with any mortgage or other lien on the Property.

This Deed Restriction will be considered, for legal purposes, to consist of "covenants running with the land." While it is in effect, this Deed Restriction will be binding on any person who may come to own the Property, and every deed, contract, mortgage or other legal instrument concerning the Property will be considered to include this Deed Restriction, and be governed by it, whether or not the Deed Restriction is actually mentioned in the legal instrument. If the ownership of only a part of the Property is transferred to anyone while this Deed Restriction is in effect, this Deed Restriction will still apply to every part of the Property.

## APPENDIX B

### AFFORDABILITY DEED RESTRICTION FOR RENTAL UNITS

Grantor and Grantee covenant that the real estate conveyed by this deed, including the land and all improvements thereto, which shall be referred to hereinafter as the "Property," shall be used for the purpose of providing one or more rental dwelling units for low-or moderate-income households and shall be subject to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., as they may from time to time be amended, which shall be referred to hereinafter as the "Uniform Controls." The time period during which the Uniform Controls shall be applicable shall be determined separately for each rental unit, with the controls becoming applicable for a unit on the day on which the first certified household occupies the unit and expiring on the thirtieth (30th) [substitute, if applicable: tenth (10th)] anniversary date of such initial occupancy.

The covenants, reservations and restrictions set forth in this deed restriction shall be deemed covenants running with the land and shall pass to and be binding upon Grantee's assigns and successors in title to the Property. Each and every contract, deed, mortgage or other instrument hereafter executed covering, pertaining to or conveying the land or any improvements thereto, and any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed, mortgage or other instruments. If a portion or portions of the Property is conveyed, all such covenants, reservations and restrictions shall run to each portion of the Property.

This deed restriction shall remain in full force and effect despite the entry of any judgment of foreclosure with respect to any mortgage or other lien secured by the Property.

## APPENDIX C

### FORM OF RELEASE OF AFFORDABILITY DEED RESTRICTION

[Supply name of administrative agent], as administrative agent duly appointed pursuant to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., hereby

certifies that the applicability of said controls to this real estate, including the land and all improvements thereto, has expired and that the Affordability Deed Restriction [supply specific reference to recorded instrument] is no longer of any force or effect.

## SUBCHAPTER 27. (RESERVED)

## SUBCHAPTER 28. NONPUBLIC RECORDS

### 5:80-28.1 Nonpublic records

(a) The documents, files, data and other records of the New Jersey Housing and Mortgage Finance Agency which are listed below shall not be deemed to be public records pursuant to N.J.S.A. 47:1A-1 et seq. Such records shall not be available for inspection, examination or copying by members of the public or by any other individual except authorized members and employees of the Agency or except as provided by order of the Governor of New Jersey, a court of competent jurisdiction, or applicable law.

1. All confidential reports, executive memoranda and evaluations submitted to the Executive Director of the Agency, the members of the Agency or to any other State Agency;
2. All personnel records;
3. All records concerning applications for employment with the Agency;
4. All records concerning personal or financial information submitted by applicants for or tenants of rental housing units financed by the Agency;
5. All records concerning personal or financial information submitted by applicants for or recipients of any single family mortgage loan or home improvement loan of the Agency;
6. All records concerning personal or financial information, including Agency form, Certification and Questionnaire, submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Agency; and
7. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the members of the Agency, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this subchapter.

**SUBCHAPTER 29. INVESTMENT OF HOUSING  
PROJECT FUNDS****5:80-29.1 Permitted investments**

(a) Housing sponsors whose mortgages are insured by the U.S. Department of Housing and Urban Development (HUD), may, with prior Agency approval, invest available funds including escrow funds in taxable or tax free investments permitted by HUD, provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request.

(b) Housing sponsors of all other projects, with prior Agency approval, may invest available funds including escrow funds in the following, provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request:

1. State of New Jersey general obligation bonds;
2. New Jersey Housing and Mortgage Finance Agency bonds, which shall be rated A or higher;
3. Bonds of municipalities, instrumentalities or agencies of the State of New Jersey, which shall be rated A or higher and whose rating of A or higher has been confirmed within the past 12 months;
4. New Jersey bond funds (consisting of bonds of any of the entities in (b)1 through 3 above) of which at least 90 percent of the bonds within the fund are rated A or higher and whose ratings have been confirmed within the past 12 months;

5. Taxable or tax-free, interest-bearing instruments which are Triple A rated. The Triple A rated instruments are limited to U.S. Treasury Notes, U.S. Treasury Bills, U.S. Treasury Bonds, Federal National Mortgage Association obligations, and Government National Mortgage Association obligations;

6. Certificates of deposit, money market accounts and other bank accounts, provided such accounts are insured in full by the Federal Deposit Insurance Corporation; and

7. Any other investment as permitted under (a) above.

(c) The rating designation in (b) above shall be from either Standard and Poor's or Moody's Investor Services.

(d) Agency staff, at the sponsors' written request, shall respond within 30 days after the complete request is received. The sponsors shall submit a certification that the investments requested are within the permissible investments listed in these rules.

(e) Investment of escrow funds shall be made by an Agency designated investment services firm.

Recodified from 5:80-29.2 and amended by R.1994 d.303, effective June 20, 1994.

See: 25 N.J.R. 4830(a), 26 N.J.R. 2572(a).

Prior text at 5:80-29.1, Definition of surplus funds, repealed.

#### 5:80-29.2 (Reserved)

#### 5:80-29.3 General applicability

The rules within this subchapter shall apply to all Agency financed housing projects. In the event the housing project receives HUD Section 8 or Section 236 subsidies or whose mortgage is insured, directly or indirectly, by HUD, any appropriate HUD rules, regulations or requirements (hereafter HUD directives) shall also apply. In the event that there are any inconsistencies between the rules in this subchapter and applicable HUD directives, the HUD directives shall prevail.

### SUBCHAPTER 30. RESIDUAL RECEIPTS

#### 5:80-30.1 Definitions

The following terms, when used in this subchapter, shall have the following meanings:

"Qualifying development" means an Agency-financed housing project owned by a nonprofit sponsor, except for projects receiving Section 8 subsidies pursuant to an Annual Contributions Contract executed after the adoption of regulations by the U.S. Department of Housing and Urban Development on February 29, 1980, at 24 CFR 883, which has:

1. Produced a positive cash flow from operations in each of the past three fiscal years; and
2. Been current in all escrow and debt service payments for the past three fiscal years.

"Residual receipts" means the balance of funds remaining after the deduction of the following items from the cash and the investment accounts of a qualifying development:

1. Debt service arrearages;
2. Current unpaid invoices;
3. Three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments, of the latest Agency approved annual budget;
4. Full funding of all required reserve accounts;
5. Anticipated or proposed capital improvements; and
6. Any other current obligations of the qualifying development.

#### 5:80-30.2 Uses of residual receipts

(a) For qualifying developments, residual receipts may be used:

1. To provide funding to expand the supply of "affordable rental housing" or to render financial assistance to other Agency financed or "affordable housing projects" (the terms "affordable rental housing" and "affordable housing project" shall mean housing with income unit distribution consistent with the requirements of tax-exempt financing pursuant to the then-current Internal Revenue Code);
2. For funding of supplementary services to the qualifying development, such as free senior citizens transportation, medical assistance and other social services programs and activities; and
3. For other uses as may from time to time, be requested, which will enhance the feasibility of a new project or the financial and social condition of an existing project.

(b) Residual receipt funding may include any one or more of the following:

1. First and supplemental mortgages, including construction mortgages;
2. Operating deficit subsidies;
3. Seed money loans; and
4. Grants.

(c) Disbursements of residual receipts shall be in the form of a loan, grant or equity contribution, as approved by the Agency, from the nonprofit sponsor to the entity receiv-

ing the funds. However, for all sponsors formed under N.J.S.A. 55:16-1 et seq., approval by the Public Housing Development Authority is required with respect to the form of the disbursement.

#### 5:80-30.3 Request for use of residual receipts

(a) All requests to use residual receipts funds must be approved by the Agency in advance. Requests shall be made in writing by the sponsor of a qualifying development and submitted to the Agency's Director of Management.

(b) The request shall specify the purpose, amount and payee. The request shall be accompanied by a resolution of the nonprofit sponsor's board of directors. If the request is for social services or professional services, the request shall also be accompanied by a proposal outlining the services and the cost. If the request involves payment to a third party, an Administrative Questionnaire, completed by the third party, shall also accompany the request.

(c) The officers, directors and principals of the qualifying development shall submit certifications that they will not receive any fee or compensation, other than reimbursement for out-of-pocket expenses, for services performed in connection with the use of residual receipts. Such certification may also be required for the officers, directors and principals of the entity receiving the funds, as determined by the Agency.

#### 5:80-30.4 Agency review and approval

(a) Upon receipt of a complete request package as delineated in N.J.A.C. 5:80-30.3, the Agency will review the request to determine whether the requested use of funds falls within the permissible uses set forth in N.J.A.C. 5:80-30.2(a) and whether there are sufficient residual receipts to fund the undertaking requested. The Agency will also evaluate the requested undertaking for feasibility.

(b) If the use of the receipts is for total funds of \$25,000 or less, it may be approved by the Executive Director of the Agency. If the request is for funds in excess of \$25,000, the recommendation and request package shall be submitted to the Agency Board of Directors for approval.

(c) Agency approval will be subject to receipt of:

1. An opinion from Agency bond counsel that the proposed use of residual receipts is permitted under the terms of the Bond Resolution and other Bond documents in connection with the Bonds issued to finance the qualifying development; and

2. An opinion by counsel for the qualifying development that the sponsor's formation documents and the laws under which the sponsor was formed permit the proposed use of residual receipts.

(d) Agency review will be subject to the payment of a \$3,500 fee to the Agency to cover administrative costs in reviewing and processing the use of residual receipts and to maintain the account established pursuant to N.J.A.C. 5:80-30.5. In addition, Agency review is subject to the payment of Agency bond counsel costs. Payment may be made by the entity receiving the residual receipts or the qualifying development's sponsor.

#### 5:80-30.5 Disbursement of residual receipts

(a) Upon approval of a request for the use of residual receipts, the sponsor of the qualifying development shall transfer the residual receipts to the Agency. The Agency shall maintain the residual receipts in a separate account and shall make all disbursements from the account to pay for the cost of the approved undertaking. The Agency shall maintain accounting records reflecting the disbursement.

(b) Prior to the disbursement of any residual receipts, the Agency will require acceptable documentation of expenses associated with the undertaking being financed with residual receipts.

### SUBCHAPTER 31. ATTORNEY SERVICES

#### 5:80-31.1 Applicability

The rules within this subchapter apply to the engagement of the services of an attorney by housing sponsors during the operation of their housing project and which services will be paid out of project funds. These rules shall not apply to attorney services paid for out of return on equity funds approved by the Agency for distribution or out of non-project funds.

#### 5:80-31.2 Scope of services

(a) Sponsors may engage the services of an attorney to perform necessary general legal services in connection with and respecting the operation of their project. Such general legal services include, but are not limited to:

1. Advising the sponsor with regard to the rules of the project, the Agency and, if applicable, the Department of Housing and Urban Development;

2. Advising the officers and directors on elections as provided by the by-laws or partnership agreement of the sponsors and supervision of elections of all officers and directors;

3. Preparation and filing of any necessary reports, forms and other documents required by law;

4. Advising the sponsor with regard to legal matters related to project bank accounts, resolutions, duties of officers, directors and employed personnel;



5. Preparation and review of contracts and purchase orders concerning the housing project;

6. Advising the sponsor and managing agent with regard to tenant and lease matters, but not including summary dispossession actions; and

7. Such other services as the sponsor may direct to be performed in connection with and respecting the operations of the project.

(b) Sponsors may engage the services of an attorney to perform tenancy related court actions including the enforcement of leases, collection of rent and dispossession of tenants. For cooperative or condominium projects, sponsors may engage the services of an attorney to perform court actions related to the collection of association dues or carrying charges and the enforcement of subscription agreements, stock certificates or other forms of agreements related to the cooperative or condominium project.

(c) Sponsors may engage the services of an attorney to perform services outside the scope of services in (a) and (b) above, as the need arises for the project. Such services include, but are not limited to, litigation, mortgage loan close-outs, conversion closings and issues requiring special expertise.

#### 5:80-31.3 Maximum fees

(a) The maximum fees which can be paid from project funds for Agency approved attorney services are as follows:

1. General legal matters . . . up to \$125.00/hour.
2. Tenancy actions, as follows:
  - i. For each of the first two cases (requiring court appearance) on the same day . . . up to \$100.00;
  - ii. For each additional case presented on the same day . . . up to \$75.00;
  - iii. For each case prepared for trial but resolved prior to actual court appearance . . . up to \$50.00;
3. General litigation, as follows:
  - i. Non-trial hours . . . up to \$175.00/hour;
  - ii. Trial hours . . . up to \$200.00/hour.

(b) For conversion closing, mortgage close-outs, special expertise and all other matters not covered by (a) above, housing sponsors shall submit a fee structure to the Agency for approval.

(c) Paralegal and secretarial services in connection with (a) and (b) above shall be included within the fees outlined above. No additional fees will be paid for paralegal or secretarial services.

(d) Additional compensation may be paid for reasonable out-of-pocket expenses, approved by the Agency, including

copying, travel, postage, filing fees, transcripts, and expert witnesses, etc.

(e) The above fees may not exceed fees charged to other clients for comparable work.

#### 5:80-31.4 Agency approval

(a) Housing sponsors desiring to engage the services of an attorney pursuant to the rules within this subchapter shall obtain the written approval of the Agency. Sponsors shall submit a proposal outlining the scope of services to be performed by the attorney.

(b) The Agency shall approve the engagement of attorney services provided the services and fees to be charged fall within those permitted by N.J.A.C. 5:80-31.2(a) or (b) and 31.3, respectively. For services outlined in N.J.A.C. 5:80-31.2(c), the Agency shall approve the engagement of an attorney provided the services are necessary or beneficial to the project, as determined by the Agency, and there are sufficient project funds to pay for such services. The Agency does not guarantee the availability of funds.

(c) All sponsors shall enter into a written attorney engagement agreement using forms approved by the Agency.

## SUBCHAPTER 32. HOUSING INVESTMENT SALES

### 5:80-32.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Available cash" means all the cash available to an eligible LD sponsor upon the closing of a housing investment sale (after payment of all transaction costs) including, but not limited to:

1. The cash portion of the purchase price paid by the buyer;
2. Any obligations or instruments of indebtedness of the buyer in favor of the seller constituting a portion of the purchase price as provided in these rules; and
3. Any accumulated residual receipts, that are not subject to recapture by the United States Department of Housing and Urban Development.

"Eligible LD sponsor" means a for-profit corporation or partnership organized under, and remaining subject to, the Limited Dividend Law, L. 1949, c.184, § 1 et seq., as amended (N.J.S.A. 55:16-1 et seq.), that owns and operates an Agency-financed, multifamily, rental housing project that, in each of the three fiscal years preceding the housing investment sale, has:

1. Produced a positive cash flow from operations; and
2. Been current in all debt service and escrow payments required by the Agency.

"Housing investment sale" means a transaction that promotes the provision or maintenance of low and moderate income housing, as defined pursuant to the Fair Housing Act, through the sale by an eligible LD sponsor of an Agency-financed, multifamily, rental housing project to a qualified housing sponsor upon the following terms:

1. The buyer executes a deed restriction (and such other instruments reasonably required by the Agency) at the closing of the housing investment sale to ensure that the project will remain affordable to low and/or moderate income tenants as provided in the original mortgages; and subject to Agency restrictions regarding tenant income eligibility, tenant selection, project reserves, return on equity rent increases and the provisions at N.J.S.A. 55:14K-7b for 35 years after the expiration of the term of the project mortgage. The foregoing documents shall also provide for the payment of a servicing fee to the Agency for monitoring the restrictions that apply to the project. Such fee shall not be less than the servicing fee being paid by the eligible LD sponsor seller at the time of the housing investment sale; and

2. The eligible LD sponsor invests an amount equal to 50 percent of the maximum additional return in the Housing Investment Sale.

"Housing Investment Sales Account" means an account established under the Agency's administrative fund. Monies on deposit in the account may be used, at the Agency's sole discretion, to provide loans or grants that will promote the provision or maintenance of low and moderate income housing as defined pursuant to the Fair Housing Act.

"Maximum additional return" means the additional return payable to the owners of an eligible LD sponsor under the Limited Dividend Law but not under the Housing and Mortgage Finance Agency (HMFA) Law, N.J.S.A. 55:14K-1 et seq., consisting of:

1. Cash invested by the owners in the eligible LD sponsor that has not previously been recognized by the Agency as investment in a housing project (including, but not limited to, those amounts invested by the owners at the initial Agency mortgage closing; any DCE/CDE funds; and the reserve for repair and replacement account, the operating reserve account and the tax and insurance escrow accounts (being transferred to the buyer in conjunction with the housing investment sale);

2. A cumulative annual return of eight percent on the investment described in 1 above;

3. If project revenues representing the return described in 2 above have been invested in the project's residual receipts account or otherwise, any income earned on said annual return;

4. An amount equal to the total reduction or amortization of the original principal owing on the eligible LD sponsor's mortgage loan from the Agency; and

5. An amount equal to the increase in the market value of the eligible LD sponsor's realty and tangible personalty during the period such assets were owned by the eligible LD sponsor, such increase to be determined by subtracting the following from the purchase price for those assets:

- i. The eligible LD sponsor's investment in the project as determined by the Agency under the HMFA Law; and

- ii. The original principal amount of the eligible LD sponsor's mortgage indebtedness to the Agency.

"Purchase price" means, in a housing investment sale, a sum equal to the fair market value of the realty and tangible personalty transferred to the buyer in the sale said sum to be comprised of:

1. Assumption of the eligible LD sponsor's first mortgage loan from the Agency and any other indebtedness of the eligible LD sponsor secured by project assets;

2. Cash paid by the buyer at the closing of the housing investment sale; and

3. Such obligations or instruments of indebtedness of the buyer in favor of the seller as the Agency may approve pursuant to N.J.A.C. 5:80-32.3(c).

"Residual receipts" means the balance of funds (including Development Cost Escrow and Community Development Escrow funds) remaining after the deduction of the following items from the cash and the investment accounts of an eligible LD sponsor:

1. Debt service arrearages;

2. Current unpaid invoices;

3. Three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments, of the latest Agency approved annual budget;

4. Full funding of all required reserve accounts;

5. Anticipated or proposed capital improvements;

6. Any other current obligations of the qualifying development; and

7. Accrued but undistributed return on equity.

Amended by R.1997 d.102, effective March 3, 1997.  
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

Added "Residual receipts"; amended "Available cash", "Housing investment sale", "Maximum additional return", and "Purchase price"; and changed the name of "MAR Revolving Account" to "Housing Investment Sale Account".

### 5:80-32.2 Realization of maximum additional return

Upon the approval of its members in the exercise of their authority under the Fair Housing Act, N.J.S.A. 52:27D-321f, the Agency shall waive any or all of the investment-return restrictions imposed under the HMFA Law, N.J.S.A. 55:14K-1 et seq., in order to permit an eligible LD sponsor to realize, from available proceeds upon the closing of a housing investment sale, a maximum additional return, as well as any return otherwise allowable under the HMFA law. Sponsors who agree to comply with the requirements of this subchapter will meet the waiver criteria.

Amended by R.1997 d.102, effective March 3, 1997.

See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

Substituted "proceeds" for "cash".

### 5:80-32.3 Application procedure

(a) The eligible LD sponsor proposing to sell its project in a housing investment sale must submit to the Executive Director of the Agency a written request for approval of the sale, containing a detailed description of the terms of the sale. The request must also include a detailed project report presenting the current physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information and may conduct its own review of the housing project's condition and operation. Full and complete disclosure of all material facts relating to the proposed sale must be made to the Agency in the request for approval, and the seller and all other parties to the transaction shall be under a continuing obligation to disclose such material facts through the closing of the sale.

(b) In selecting the prospective buyer for the project, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best offer.

(c) The housing investment sale shall include an assignment from the seller and an assumption by the buyer of all existing project indebtedness. If the sale includes any supplemental financing, the amount of such financing shall not exceed the debt that the project can reasonably sustain from project income through the remainder of the Housing Assistance Payments (HAP) contract or, if no HAP contract exists, through the remainder of the original mortgage term, without jeopardizing the viability of the project as a low-income project for the remainder of the original mortgage term. Supplemental financing may be provided by the Agency or other lender or may be provided by the seller. The terms of any supplemental financing shall be subject to the approval of the Agency provided, however, that: in no event may the aggregate principal repayment of such indebtedness result in amounts in excess of the amounts payable

to the seller under N.J.A.C. 5:80-32.6(b)3i and ii; all such indebtedness must be subordinate to the Agency's first mortgage lien and security interest in the project; and the buyer shall agree not to prepay the Agency's first-mortgage. The Agency's approval of a sale requiring supplemental financing shall be subject to the receipt of an opinion by nationally recognized bond counsel, in form and substance satisfactory to the Agency and the Attorney General, that such financing is permitted under any Bond resolution to which the payments under the Agency's mortgage on the project are pledged, and does not adversely affect the Federal and State tax treatment of any outstanding bonds, notes or other obligations of the Agency. The cost of such opinion shall be borne by the seller.

(d) As a condition of approving the sale, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller under (a) above and the independent review by the Agency. Deferred maintenance must be completed no later than the closing of the sale, unless otherwise agreed by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency.

(e) As a condition of approving the sale, the Agency will also require payment of debt service arrearage, current unpaid invoices, total operating expenses covering three months (for senior citizen projects) and six months (for family projects), full funding of all reserves and any other obligations of the project.

(f) Upon assignment and assumption of the Agency's mortgage, provisions shall be included in the deed restriction clearly specifying the Agency's right to enforce these regulations for the 35-year period after the expiration of the term of the Agency's first mortgage.

Amended by R.1997 d.102, effective March 3, 1997.

See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

In (c), inserted text "Supplemental Financing may be provided ... prepay the Agency's first mortgage." and "is permitted under any Bond resolution ... project are pledged, and"; and in (f), substituted reference to inserting a provision in the deed for reference to modifying the mortgage, and inserted reference to 35-year post expiration period.

### 5:80-32.4 Required documents

(a) To assist the Agency in its review of an eligible LD sponsor's request for approval of a housing investment sale, as described in N.J.A.C. 5:80-32.3(a), the seller shall supply the Agency with the following documents, in form and substance satisfactory to the Executive Director:

1. Administrative questionnaires for the buyer;
2. Copies of the buyer's organizational documents;
3. Any Previous Participation Certificates (form 2530) for the buyer;
4. A physical inspection report approved by the Agency;

5. A financial report on project operations approved by the Agency; and

6. Any other documents or other information requested by the Agency that would reasonably assist it in reviewing the proposed housing investment sale.

Amended by R.1997 d.102, effective March 3, 1997.

See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

Deleted (a)4, relating to a buyer's certified financial statement, and recodified former (a)5 through (a)7 as (a)4 through (a)6.

#### 5:80-32.5 Fee

The eligible LD sponsor seller shall pay a processing fee to the Agency in such amount, as determined by the Agency, as will reimburse the Agency for its administrative cost (that is, Agency staff time and actual expenses incurred) in reviewing and processing the seller's request to engage in a housing investment sale. With its initial request for approval of the sale, the seller shall submit a non-refundable \$5,000 deposit that shall be credited toward the processing fee. The seller will be billed for any balance due at the closing of the sale, and said balance shall be due and payable at that time.

#### 5:80-32.6 Closing

(a) At the closing of any approved housing investment sale, the following documents, in form and substance satisfactory to the Agency, shall be delivered:

1. Legal opinions from the seller's and buyer's attorneys to the effect that the respective entities' participation in the housing investment sale is fully lawful; and

2. Any legal opinion of nationally recognized bond counsel reasonably required by the Agency relating to the proposed housing investment sale or its effect upon any outstanding obligations of the Agency.

(b) At the closing of any approved housing investment sale, the following shall occur:

1. The eligible LD sponsor shall transfer title to the realty and tangible personalty comprising its project, as well as any required project accounts, escrows and reserves, to the buyer;

2. The buyer shall pay to the eligible LD sponsor the purchase price for the project by assuming the project indebtedness of the eligible LD sponsor and paying the balance of the purchase price in cash and indebtedness of the buyer in favor of the seller; and

3. The Agency shall review and approve the following payments to be made from the available cash of the eligible LD sponsor:

i. To the eligible LD sponsor, an amount equal to its investment in the project, as determined under the HMFA Law payable in cash and/or permitted indebtedness of the buyer;

ii. To the eligible LD sponsor, an amount equal to 50 percent of its maximum additional return payable in cash and/or permitted indebtedness of the buyer;

iii. To the Housing Investment Sales Account, an amount equal to 50 percent of the maximum additional return of the eligible LD sponsor payable in cash and/or permitted indebtedness of the buyer to the seller assigned by the seller to the Agency;

iv. To the State Treasurer, the balance of eligible LD sponsor's available cash, as required under the Limited Dividend Law payable in cash only;

v. In the case of indebtedness of the buyer in favor of the seller, the amount payable to the Agency under (b)3iii above representing such indebtedness is not required to be paid in cash at closing. Instead, the Agency shall receive such amount through assignment by the seller to the Agency of 50 percent of the annual repayment of the indebtedness of the buyer in favor of the seller.

Amended by R.1997 d.102, effective March 3, 1997.

See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

In (b)2, inserted reference to payment by buyer's indebtedness to the seller; in (b)3i and (b)3ii, inserted reference to payment in cash and/or indebtedness; in (b)3ii, substituted "Housing Investment Sales Account" for "MAR Revolving Account"; in (b)3iv, inserted "payable in cash only"; and added (b)3v.

#### 5:80-32.7 Developer's fee and return on equity

(a) The Agency may credit buyers with a developer's fee of 10 percent of the purchase price at the time of closing. The developer's fee may only be pledged as equity in the project. No project funds or available cash may be used to pay a developer's fee to the buyer.

(b) Buyers shall be eligible to earn a return on equity based upon any equity investment in the project including the developer's fee which is being pledged as equity. The rate of return shall be established pursuant to N.J.A.C. 5:80-3.3(b), unless the buyer elects to qualify for enhanced return on equity under (c) below. During the regulatory period, after expiration of the term of the Agency mortgage, the return on equity restrictions shall continue as provided in this section until the owner funds an operating reserve account in the amount provided in N.J.A.C. 5:80-5.10(b)6. The operating reserve account shall be maintained until the expiration of the deed restriction and administered as provided in N.J.A.C. 5:80-5.10(b)6. If the operating reserve account is used, the return on equity restrictions hereunder shall be reinstituted until the operating reserve account is again fully funded.

(c) Buyers which agreed to fund a capital improvement account, and agree to preserve the low-income status of the project for an additional 15 years, as provided below, may receive enhanced return on equity during the term of the Agency's mortgage through a split of the project's residual receipts on a <sup>50</sup>/<sub>50</sub> basis with the Agency.

1. The capital improvement account would be in addition to the reserve for repair and replacement account, the operating reserve account, and any rehabilitation expenditures escrow funded in connection with secondary financing. The capital improvement account shall be used for capital improvements, repairs, maintenance and any other expense of the project which will help ensure that the project is maintained as safe and sanitary rental housing during the mortgage term and thereafter. Ten percent of the annual residual receipts must be deposited into the capital improvement account prior to distribution of the residual receipts between the Agency and owner;

2. The buyer shall execute a deed restriction which preserves the project as affordable rental housing for an additional 15-year period, subject to the same Agency restrictions as are applicable during the 35-year period under the definition of housing investment sales in N.J.A.C. 5:80-32.1;

3. The Agency's annual share of the residual receipts shall be deposited into the Housing Investment Sales Account;

4. Buyers which elect to participate in this option must make such election at the time of closing. Buyers may elect to participate subsequent to closing, provided they fund the capital improvement account with an amount equivalent to the amount which would have been required since closing and distribute 50 percent of the accumulated residual receipts to the Agency for deposit into the Housing Investment Sales Account.

(d) The distribution of amounts to the buyer pursuant to this section shall be subject to those conditions set forth at N.J.A.C. 5:80-3.4.

New Rule, R.1997 d.102, effective March 3, 1997.  
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

## APPENDIX

### Example of Application of Subchapter Rules

(a) A group of individuals formed an eligible LD sponsor and invested \$1,500,000 in it: \$1,000,000 was invested in the physical assets of the project (that is, its realty and tangible personalty) and was recognized as investment in the project under the HMFA Law; \$500,000 represented promoters' fees and was not recognized as investment in the project under the HMFA Law. The eligible LD sponsor received a non-recourse loan of \$9,000,000 from the HMFA.

(b) If the Agency had recognized the entire \$1,500,000 as investment in the project, which it was not required to do, the eligible LD sponsor would have been entitled to an additional return on its investment of \$40,000 in each year of operation. For 15 years the project generated revenues sufficient to cover this additional \$40,000. The \$600,000 (15 years x \$40,000) aggregate representing this additional re-

turn, along with other surpluses, was invested and earned a total of \$200,000 in interest income over the 15 years.

(c) Fifteen years after the formation of the eligible LD sponsor, a qualified housing sponsor proposes to buy the physical assets of the eligible LD sponsor in a housing investment sale. At the time of the sale, the eligible LD sponsor has repaid \$1,800,000 of the HMFA loan and has received the full annual return on investment permitted under the HMFA Law. At the closing of the housing investment sale, the project's residual receipts, as defined in N.J.A.C. 5:80-30.1 were \$2,200,000. The purchase price paid by the buyer to the eligible LD sponsor is \$10,900,000, paid by assuming the \$7,200,000 mortgage loan still outstanding and paying \$3,700,000 cash at closing.

(d) At the closing of the housing investment sale, \$200,000 of the purchase price is applied to transaction costs. Thus, the available proceeds of the eligible LD sponsor is \$5,700,000, computed as follows: \$3,500,000 (the cash portion of the Purchase Price, \$3,700,000, less \$200,000 in transaction costs), plus \$2,200,000 (the residual receipts). (See N.J.A.C. 5:80-32.1, "available cash".)

(e) The maximum additional return is \$4,000,000, computed as follows:

1. \$500,000 cash invested by the owners of the eligible LD sponsor that was not recognized as investment in the project (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 1), plus

2. \$600,000 representing cumulative annual return on the \$500,000 described in (e)1 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 2), plus

3. \$200,000 investment income earned on the \$600,000 described in (e)2 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 3), plus

4. \$1,800,000 representing amortization of principal on the Agency's mortgage loan (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 4), plus

5. \$900,000 in market appreciation of realty and tangible personalty (that is, the purchase price of \$10,900,000 less investment in the project of \$1,000,000 and original mortgage loan of \$9,000,000, as provided in N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 5).

(f) At closing, the following payments are made from the available proceeds:

1. To the eligible LD sponsor, \$1,000,000, representing its investment in the project, as determined under the HMFA Law (see N.J.A.C. 5:80-32.6(b)3i);

2. To the eligible LD sponsor, \$2,000,000, representing 50 percent of its maximum additional return (see N.J.A.C. 5:80-32.6(b)3ii);

3. To the Housing Investment Sales Account, \$2,000,000 representing 50 percent of the maximum additional return (see N.J.A.C. 5:80-32.6(b)3iii); and

4. To the State Treasurer, \$700,000, representing the balance of available proceeds (see N.J.A.C. 5:80-32.6(b)3iv).

Amended by R.1997 d.102, effective March 3, 1997.

See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

In (d), (f), and (f)4, substituted "proceeds" for "cash"; and in (f)3, substituted "Housing Investment Sales Account" for "MAR Revolving Account".

## SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

### 5:80-33.1 Introduction

(a) Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, establishes a low income housing tax credit that may be applied against the Federal income tax of persons or associations who or which have invested in certain buildings providing housing for families of low-income. As the housing credit agency for the State of New Jersey, the New Jersey Housing and Mortgage Finance Agency (NJHMFA) allocates these credits to qualified taxpayers and thereafter monitors their compliance with Section 42 of the Code. The rules in this subchapter set forth the standards and procedures used by NJHMFA to perform its allocation and monitoring responsibilities and this subchapter represents the qualified allocation plan for New Jersey required by Section 42 of the Code.

(b) In each calendar year, the total dollar value of the credits that can be allocated under these rules, except for the credits issued in connection with buildings financed with the proceeds of certain tax-exempt bonds, is limited by the State housing credit ceiling provided in Section 42 of the Code. NJHMFA, therefore, has determined to award these limited credits on a competitive basis. Applicants seeking an allocation of these credits must apply under one of the cycles set forth in N.J.A.C. 5:80-33.4, 33.5, 33.6 or 33.7. NJHMFA ranks the applications received in each cycle according to the respective point scales provided in N.J.A.C. 5:80-33.15, 33.16, 33.17 and 33.18. The credits assigned to each cycle are then reserved for the highest ranking applications that meet the eligibility requirements set forth in N.J.A.C. 5:80-33.12.

(c) Credits issued in connection with buildings financed with the proceeds of tax exempt bonds subject to the volume cap restrictions provided in Section 42(h)(4) of the Code are not limited by the State housing credit ceiling and, therefore, are not allocated on a competitive basis. Applicants seeking such "volume cap tax credits" are directed to the provisions of N.J.A.C. 5:80-33.9.

(d) It is the burden of every applicant to comply literally with the requirements of these rules and to ensure that any application presented to NJHMFA is clear, unambiguous and complete in all respects at the time of submission.

(e) These rules shall be construed and administered in a manner consistent and in accordance with the Code and regulations promulgated thereunder.

(f) Compliance with the requirements of the Code is the sole responsibility of the owner of the building for which the credit is allowable. NJHMFA makes no representations to the owner or anyone else as to compliance with the Code, Federal regulations issued under the Code, or any other laws or regulations governing Low Income Housing Tax Credits, or as to the financial viability of any project. All applicants should consult their accountant, tax attorney or advisor as to the specific requirements of Section 42 of the Code governing the Low Income Housing Tax Credit Program.

(g) These rules have been promulgated in a manner consistent with the smart growth initiatives required under Executive Order No. 4(2002).

Amended by R.1998 d.279, effective June 1, 1998.

See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

Rewrote (a); added new (b) through (d); and recodified former (b) and (c) as (e) and (f).

Amended by R.1999 d.120, effective April 5, 1999.

See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

In (b) and (c), changed N.J.A.C. references.

Amended by R.2002 d.233, effective July 15, 2002.

See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).

Added (g).

Amended by R.2003 d.300, effective July 21, 2003.

See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).

In (a), (b), amended N.J.A.C. reference.

### 5:80-33.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Brownfields site" means, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., "any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of contamination." For the purposes of this subchapter, the proposed redevelopment for the site under consideration must also have an approved New Jersey Department of Environmental Protection Remedial Action Work Plan.

"COAH" means the New Jersey State Council on Affordable Housing.

"COAH obligation" means a low or moderate-income rental project in a plan that is either COAH-certified or under COAH's jurisdiction as the result of a petition to receive substantive certification or to amend a plan that has previously received substantive certification.